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GOVERNMENTS OF CONTINENTAL EUROPE

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FRANCE and the Low Countries
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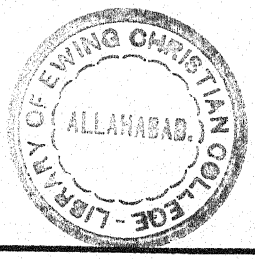

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PREFACE

As this volume appears, the Hitlerian revolution in Europe is in full swing, challenging at least three hundred years of its history, practically the whole modern period of state building. But, while this vast movement has apparently wrought fundamental changes in those states of the Continent which cherished the institutions of representative government and liberty, it is much too soon to say what the final outcome will be. The measurement of historic forces must await the time when the equilibrium will be struck. In the meantime it is well, during a period of swift-moving change, to recall the enduring strength of character, the vital trend of aspiration and outlook of European peoples, which found expression in the age-long evolution of national states. Of all these none of the Continent rested on more solid base than France, the country which to the superficial observer abroad and the political adventurer at home has seemed most susceptible of change. We shall now see whether the innate conservatism of a people that knew how to change governments while clinging to consistent policies will turn against the whole current of their history, a current slow but deep, which swept away oppression and made liberty a shining symbol for the world.

For the better understanding of this new crisis, this test of institutions as well as of national temper, there could be no better preparation than the study of the Third Republic, such as that presented in the pages which follow. The volume was already being printed when the new constitution was prepared for France, under the tutelage of the Nazis. But the fact that it has not been possible to present an analysis of it in the text may be turned to advantage if the reader will work out for himself those elements of the new plan of government which lie in the past experience of the French and those which are frankly copied from the German or Italian model. For the study of the structure and working of totalitarian states, the sections of this volume which deal with Germany, Italy and Russia will furnish ample material. It would

be difficult to conceive of any more important subject in the political and social sciences today.

As for the method of co-operation by which this composite work was prepared, it should be said that it was in the fullest extent that of free association; the conditions of scientific work are themselves a commentary upon totalitarian controls. To the publishers, from whom came the initial plan of the volume and helpful suggestions for its adaptation to college use, the authors are indebted for constant support, and especially for co-operation in the preparation of maps. Acknowledgment should be made of the services of Miss Harriet Church in the exacting task of preparing the index, a task performed with meticulous care and scholarly insight. A special feature of the volume is the detailed analysis presented in the Table of Contents. This has been prepared by Mr. Sanford Schwarz on the basis of the topical headings in the text, in order to offer not only a ready guide to the subject matter but also a syllabus for classroom use.

J. T. S.

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INTRODUCTION

BY *James T. Shotwell*

THE PROBLEM OF GOVERNMENT

1. THE CHALLENGE OF RECENT EVENTS

The world crisis of today is making clearer than ever before the importance of government in the evolution of civilization. Before the autarchies of Central Europe challenged—as they have done recently—the nature of government as embodied in the State system of the nineteenth century, students of public affairs were more interested in what political institutions were doing than in what they were. The process of law-making could, so it seemed, be taken for granted; executive, legislative, judicial organs of government pursued their accustomed routine. The main principles of government were unquestioned in most countries, above all, in the democracies. In the case of the United States the Constitution furnishes an unquestioned framework within which government functions for good or ill. The student of American history has accepted this political structure as inevitable. Similarly, within the British Commonwealth of Nations, that federated group of self-governing countries under the British Crown, the unwritten constitution of the mother country has been regarded as furnishing the essential outline of a system of guarantees of self-government, embodying indisputable axioms of wisdom. The French have their own tradition of liberty and self-government in a republican framework which has stood seventy years of unparalleled stress and strain, buttressed as it is by the conservativism that is the heritage of history. The smaller European democracies which existed prior to 1914, especially the Scandinavian countries, Switzerland, The Netherlands and Belgium, likewise have taken their constitutions for granted; and while they, like all the rest, were interested in their maintenance, they concentrated attention more upon social and economic questions than upon the nature of government. In all these countries political evolution had apparently ceased to be a major question either for practical politics or for academic discussion. Every-

where it was recognized that there was room for betterment, as movements for reform challenged from time to time the complacency of the conservatives. But these were all, or nearly all, in one direction, and that was in the fulfillment of the original plan. Democracies were becoming more democratic and governments more efficient; the public interest lay in seeing how far this could proceed within the recognized framework of the State. Except for a negligible minority, the accent in political debate was upon what the government did and not upon what the government was.

The autarchies of Central Europe have challenged this way of looking at things, and reject, for the time being at least, not only the kinds of government under which they formerly lived but the very reasons for their existence and the purposes they served. When a movement like this is under way, it is fatal blindness for the citizens of countries not—or not yet—subject to the influences of this political revolution, to remain indifferent to what is at stake. It may be that the movement will pass into history leaving much less trace than most people think; but it may be that not only our institutions but our fortunes and our lives will be at stake, before the issue as to what is the right form of government will have been fought out. In any case, the situation is one that calls for careful and thoughtful study; for it must be remembered that the national institutions and ideals which we prize were once highly respected by most people in all the countries that have now rejected them. Representative government, for example, was once accepted everywhere, either as a fact or a thing to be desired. Even Czarist Russia paid tribute to the political genius of the English, when it sought to quiet revolution by the establishment of the Duma; and, although war and revolution soon played havoc with liberalism, it was only with the passing of time that the Soviet form of government was to stand revealed as a more important fact than the principles of Communist economics. The Communist State soon modified its collective system for purposes of efficiency, but has been unyielding in its insistence upon absolute power. The Nazi government, more consistent in its evolution, steadily extends the scope of the authoritarian State. Fascist Italy, having educated a whole generation in its doctrines, claims utterly to have forgotten the liberalism of Cavour and of Mazzini. Even France, treasuring the tradition of the Revolution, calls for a halt in the program of its social reforms and a curtailment of political liberty—as for instance in outlawing the Communist Party—in order to defend the

Republic against the menace of a Europe given over to these new political doctrines, and thus does homage to their power.

The student of government should approach these problems not in the spirit of controversy, but with a scientific curiosity as to how the whole evolution has come about. This does not mean that he should be so detached in his outlook as not to have any interest in the ultimate outcome; for this is his world which is here described. The growth of science, with its conquest of time and space, making the world one—forcing interdependence upon nations, even against their will—makes these problems of other peoples his own. Their success or failure, their growth in power or in misery are bound to affect us, even if, happily, they leave untouched the fundamental nature of the American State. But to understand what has taken place is not easy. It is difficult for those who live within the nations that are engaged upon these great experiments; it is still harder for us who look back across a wholly different history from that of Europe and can view, from what seems the safe distance of the New World, the tragic and hitherto futile struggle to secure an equilibrium. It is therefore important for us to find the best way for setting about the study of these things which are so dominant in Europe today.

2. THE COMPARATIVE STUDY OF GOVERNMENTS

The comparative study of governments is one of the most difficult of subjects. To compare the rules for human conduct in one country with those in another without regard to the differences in tradition, environment and relation to other nations, or even without regard to the fundamental facts of geography, is more likely to open the door to misunderstanding than to enlightenment. The statistician can measure the output of industry or the extent of the wealth of different countries and produce a relatively reliable balance sheet; but no such balance sheet is possible in the comparison of one country's government with another. The institutions of government which bear the same name may be utterly unlike in their actual functioning. Above all, since government depends to a great degree upon public opinion, or the lack of it, in different countries, the mere study of the framework of institutions may be quite misleading as to their vitality or real importance.

It follows, therefore, that the comparison of externals in the

study of government may often prove worse than useless. On the other hand, it is of course necessary in any general study of government to note the outer resemblances which make the history of government in different countries sufficiently similar in purpose at least, so that their general outlines are recognizable everywhere. For instance, to take the most elementary case, the evolution of government tended to bring about a recognition of the necessity of keeping the legislative and the judicial functions separate or carefully defined. The rigid constitutional separation between executive and legislative is of course not to be found in governments of a parliamentary system; it is the peculiar mark of the form of government of the United States and of those countries which have been influenced by its constitutional history. But it is one thing to recognize these three groupings of the powers of government as inherent in the governments of all civilized countries, and it is quite another thing to know the relationship of one to the other and their relative importance. In measuring these facts, or attempting to do so, we must not lose sight of the lesser organs of government in each case and their relation to the sovereign bodies. No country, not even in the centralized systems of autocracy, entrusts all its government to the supreme authority; for government is the management of the nation's business as well as the higher direction of it. Therefore, the administrative systems which extend throughout the whole country must be examined as well as any other special bodies like those which have grown up recently in times of crisis, if we are to have an accurate picture of government as a whole.

These cautions in the use of the comparative method may seem unnecessary now, but only a generation ago they were violated on all sides by the teachers and students of comparative public law. One of the greatest teachers of that subject which America has produced, writing in the closing years of the nineteenth century, described the government of the young federal Republic of Brazil as embodying the most perfect safeguards of liberty and making the most adequate provision for democratic government, because its Constitution at that time bore the outer marks of a definite copy of that of the United States. Events were soon to falsify this generalization, so that we now have the proof of the misleading character of such a comparison. But if the social and political forces which were then working themselves out in Brazil had been studied along with the outer framework of its Constitution, it would have been clear that the resemblance to

the United States' form of government was, after all, only a superficial one.

The particular example of Brazil has been chosen here, although it lies outside the field covered by this volume, because of the belief that the chief value to the American student of the study of the governments of Europe lies not in the increased knowledge of the details of Continental governments but in the correction and direction of his method of thinking about the place of government in human society and, more especially, his own. It is therefore of interest to point out that the divergencies which seem so striking between the Continental European and the United States' forms of government may, after all, exist to an equal extent in a more disguised form elsewhere. One of the outstanding statesmen of Latin America, who had been and was to be again the President of his country, came to the United States some years ago to study how our government actually worked, because he as a trained jurist had come to the conclusion that the terms which we used to describe government meant different things in different languages. For instance: Liberty does not mean quite the same thing as freedom. Liberty, with its Latin associations, carries the suggestion of escape from tyranny or overexactions of government. This was what the French meant by *liberté* in the French Revolution and in Jacobin philosophy. There it was a revolt against the exactions, mostly feudal, of the Old Regime. It was more a negative than a positive concept. It set bounds to governments and safeguarded the freedom of the individual. Freedom on the other hand has a positive content; it is a normal expression of life itself, something which the individual obtains as a birthright, especially in countries which treasure the common law of England and recognize the inherent regard for human rights, which has become a tradition of the Anglo-Saxon way of living.

The South American statesman, studying the way in which the United States actually governs itself, came to the conclusion that the fundamental concepts of government were different here from what they were in his country, although he used the same language in describing them. For him, government was a synonym for authority, and not for co-operation; the citizen was either on the side of the government or was its potential enemy, one whose latent hostility could be taken for granted. The American party system of government, while it divided the nation to some extent on traditional lines and to a greater extent on the issues of the

day, was, he said, always subordinate to something which the countries of the Latin tradition found hard to understand, a thing called "public spirit."

It should be evident from this discussion that external comparisons of one government with another have to be used with the utmost care. One other example drawn from the teaching of the same pioneer in the study of comparative government will suffice. In his analysis of the American Constitution the Supreme Court was the most important of the organs of government, because it was dedicated to the task of preserving the liberties of the citizens against possible encroachments of government. In the Constitution of the United States a sphere of liberty had been carved out of the powers of government itself, and the Supreme Court as its protector was therefore the very culmination of constitutional history. There being no such clear-cut recognition of the sphere of liberty of the individual in England against an all-powerful Parliament, the nearest parallel to the Supreme Court was found in the Judicial Committee of the Privy Council, a body of which few Englishmen had anything more than the most incidental knowledge. To attempt thus to fit the English form of government within the model of that of the United States resulted therefore in a complete absurdity. It is everywhere recognized that no country has been more jealous of the liberties of the citizen than England itself. It does this by a different set of institutions from those of the United States, but does it most effectively. External comparison is obviously a method to be avoided except when modified and corrected by a knowledge of the history and practical politics of the different countries concerned.

3. THE STATE

The fact, which seems obvious to us now, that we must go behind the framework of governments if we are to understand them does not justify the conclusion that the framework is less important than jurists formerly thought it was. On the contrary, as was indicated in the opening sentences of this Introduction, we are becoming more and more aware of the importance of the institutions by which nations act, because they so largely determine the character of the action. It was, therefore, a contribution of the first order when the political scientists of the nineteenth century traced in such confident outline the place of

government in the national State, even if the universal standards which they set up did not always apply. It was something, for example, to have pointed out more clearly than had been done before the distinction between government and State and to bring to the fore the great issue of the nature of sovereignty.

These were definite gains in the understanding of organized society. The critic of today is too likely to forget what a great advance they represented upon the careless generalizations of earlier writers. But, while appreciating the contributions of these systematizers of political theory, we must at the same time be aware of their limitations.

Among these there was the tendency to think in absolute terms, to erect hard and fast categories into which all the varied data of different national histories would have to fit. We have just seen two examples of this: a touchstone for testing the excellence of governments was rightly held to be the preservation of liberty. Therefore, the country which made provisions for this in its constitution had apparently reached a higher stage of development than one which had not. But the logic is misleading, because nations have different ways of doing the same thing and different needs at different times. In times of supreme crisis every nation changes its form of government; but there are varying degrees of emergency all the time, and no one system of government can serve as a rigid universal model for all the world. This is to be borne in mind in the present world crisis.

The study of government, therefore, is but part of a larger problem, that of the nature of the State. The modern State itself might be described as a house for a nation to live in. The older ones often have venerable exteriors and dark or unfrequented rooms within. All of them have brave fronts; for democracies are as susceptible to display and national prestige as monarchies. But most of the nation's activities, those of the day's work of the common man, take place in complete indifference to what is being done in offices of governments. The State is large enough to include both government and the escape from it in the sphere of liberty. Also we must remember that the State, and not merely the government, is the ultimate source of authority, that is to say, sovereignty.

It is an axiom of political theory that only the State can be sovereign; and that sovereignty is the highest expression of power. The German theorists of the nineteenth century, whose teachings moulded the thought of American universities at the turning of

the century, phrased the concept of sovereignty in more extreme terms. It was absolute power and lay beyond all possibility of question or dispute. One might question its agents or its national embodiment; but sovereignty itself could no more be questioned than life. One might object to this or that living body but life itself is an ultimate that transcends its manifestations. So this ultimate attribute of the State was regarded in theory as unlimited and unqualified power.

It would seem as though this were so far removed from the realities of politics that it might be completely ignored in a study of government. But the theory of the absolute sovereignty of States has played an important part in the history of governments, especially in their relations with one another. If sovereignty means that every national State is the judge of its own actions, the consequence is international anarchy. The insistence on the full exercise of such prerogatives is, fortunately, rare; because the process of diplomacy and treaty-making keep the international neighborhood working fairly well under ordinary circumstances. But when major controversies arise, politics of power fall back upon absolute sovereignty. This makes war a potential threat all the time; so long as these conditions last, all talk of permanent peace between nations is utopian. The "balance of power" is an uncertain anchorage for stability.

But over against this assertion of absolute sovereignty, there is also a drift toward a recognition of the conception of the State as a partner with other States in the furtherance of the great ideals of peace and social and political justice. For the attainment of this purpose sovereignty must be relative, not absolute. Just as within the State, it is and always has been limited by habits and morals, so between nations it is—and has been—limited by the recognition of common interests. In short, the only political reality is that which can be realized; and it is limited, not absolute, sovereignty.

It is significant that it was in Bismarckian Germany that the idea of absolute sovereignty was given its classic form and that it found lodgment in the United States in the generation that followed the War between the States. Those who lived through the final process of the making of the State were naturally those who insisted upon its ultimate prerogatives. Since the World War, however, there have been two notable movements in the opposite direction, the acceptance by nearly all the world, in principle at least, of the Covenant of the League of Nations, and

the recognition of a British Commonwealth of Nations in the Statute of Westminster of 1931. In both cases States surrendered some portion of their sovereignty, or professed to do so. The States Members of the League of Nations did not live up to their obligations under the Covenant, it is true, but they all recognized that in not doing so they were making it impossible for the League to fulfil its mission, and that the chief obstacle to any effective League in the future will be this question of State sovereignty. As for the British Commonwealth of Nations—also a creation of the World War—the grant of almost complete independence to the Dominions leaves both them and the mother country with incomplete sovereignty as States. This fact is not changed by a common allegiance to the Crown of Great Britain. The sovereignty of States is not the same as the sovereignty of kings. Yet one is tempted to wonder if the British, by the device of this symbolism of royalty, may not have found a way to harmonize the sense of unity and stability, which lies in the concept of sovereignty, with that of adjustment to changing circumstance, which is an equally vital need of nations in the dynamic era of science.

If and when the United States enters the era of constructive world planning, it seems reasonable to expect that its unique experience with the federal system of government will offer a contribution, not unlike the British experiment in principle but with other local and historic associations, toward the evolution of a less anarchic State system than that which insists upon the absolute sovereignty of each nation. These, however, are speculations for the future. They need, first of all, to be checked and tempered by a glance at the history which lies behind the whole process of government.

4. TRIBAL ORIGINS

The method followed in this volume is the opposite of that which has just been described. Instead of taking the different organs of government in each country and comparing them one by one with those in the other countries of Continental Europe, the institutions of each country are described against their own background, or at least as much of them as is necessary to understand the problems of government today. The final work of comparison is left for the student and the teacher. But the vol-

ume supplies the data necessary for a general understanding of the way in which Europe is today consciously experimenting, as perhaps never before in all its history, with the structure and function of the State.

It is not possible in the limited space in this short Introduction to fill out the remoter background of this historical evolution, but some of its more fundamental elements should be kept in mind if we are to have an intelligent picture of the process as a whole; for however widely the institutions of government differ today, they all spring from common origins in the inherent needs of society.

Already in primitive life anthropology shows us some of the elements both of government and social cohesion which still play an important role in the modern world. Excluding as lying outside of history the rather hypothetical groupings of mankind into the semi-animal formations of the horde with no permanent structure or traceable continuity, we strike something definite and stable when the blood-tie becomes the basis of the family, clan, and tribe. But the blood-tie of primitive life was a very different thing from that of today; it was a relationship prescribed and determined by the most ironclad system of law that the world has ever produced—that of taboo. Although it goes without saying that the emotions played their passionate part in kinship relations, those relations themselves were prescribed and could not be violated without incurring death or exile, or at least the loss of membership in the tribe.

Government, apart from the routine for carrying on ordinary activities, might be described as the organization of safety; it was in the hands of those leaders who were recognized as qualified to meet danger and protect the tribe from it. This meant the evolution of two classes of specialists: those who knew how to meet and overcome the dangers of the unknown and the mysterious by the ceremonies of magic or religion (the medicine man or priest); and those who could best lead the war band against the neighboring enemies, but who also would have to know the proper omens or auguries to win supernatural aid. This tribal form of society existed everywhere in Europe at the beginning of history and far along in its annals. In disguised ways some of it has lasted to the present, but until very recently it had ceased to play any important part in social formation, let alone political history. The Jewish people, it is true, when segregated into ghettos, preserved much of the social formation of the tribe on

the religious basis, but not having any political embodiment this remained unimportant for any but themselves. On the other hand, the growth of nationalism, especially in Germany, fastened on to a racial myth—one that has no scientific validity whatever —that Nordic blood relationship was at least a recognizable qualification for German citizenship. It is because of this fundamental doctrine of the Nazi as to the peculiar quality of Aryan blood that it is necessary for the historian of Continental European governments today to go so far back as this into the tribal origins of settled society. So far as this basis of Nazi philosophy goes, it is only primitive tribalism in modern dress.

5. THE BEGINNINGS OF POLITICS

While the tribe stands in the background of Western history, that history only really begins with the breaking of the blood-tie and the disintegration of the tribe. This is equally true in Greece and Rome as it is in all the countries of Northern Europe. In Greece, the breaking down of the tribe took place in the sixth century B.C. when Cleisthenes reorganized the citizens according to wealth and situation and so enlarged and recast the citizenship. From that time on, the management of the affairs of the city State (Polis) acquired an importance of its own—politics. While never wholly secularized in the antique world, it became a school of human conduct whose leaders were not only the statesmen of Athens, but the philosophers and poets as well. The prime cause for this evolution from tribal life to politics was that Athens was becoming an important seaport, and foreign merchants settling in it brought new problems of law and justice both for themselves and for the native Athenians. The result was registered in the history which stretches from the early rise of capitalism when Solon recast the laws of debt to those of Aristotle who looked back into the history of the Athenian Constitution at the very moment when the long spears of Macedon were making of it only a thing for history.

The early evolution of politics in Rome was almost exactly the parallel of that of Athens. The traders who nosed their boats up the Tiber to the Seven Hills and spread their wares in their little stalls around the market place (Forum) were destined both to break down the ancient blood-tie of the tribesmen (in the Comitia Curiata) and ultimately to secure the full rights of

citizens of Rome. This revolution started back in the days of the kings when Servius Tullius reconstructed both the army and the town meeting (Comitia Centuriata) on the basis of wealth. The process of integration of citizenship was slowly carried forward until at last it embraced all the nations that lived under the Roman sway. Parallel with this extension of citizenship went that other great achievement of Rome—the development of law from tribal custom under the kings, substituting contract for taboo and embracing Greek philosophy and the precepts of Christianity, until it became the noblest expression of the secular ideals of the ancient world and perhaps the most impressive monument of its culture.

The breakdown of the blood-tie north of the Alps was largely brought about through the migrations from Central and Northern Europe. This process had been going on for centuries before the breakdown of the Roman Empire. There were "Gauls" in Rome under the kings and they left their name in "Galatia" in Asia Minor, as well as on the borders of Russia. The Greeks of Homer had come from the north with their steel swords from Danubian smithies. In short, the process of migration which Caesar stopped for four centuries at the bridge of Geneva and which breached the walls of Rome in 410 A.D. was the keynote to both the pre-history and history of those peoples who were to be the ancestors of the French, the British, and the Germans today. The Gauls themselves were Germans, coming as they did not far from Hitler's home to overrun France, conquering the Mediterranean peoples, whose neolithic settlements had stretched up from Corsica to Wales.

While this vast turmoil of peoples, extending over centuries, mingled the blood of conqueror and conquered, it naturally left more of the primitive structure of tribal relationship in Germany than in the countries to the west and south. This is reflected in the history of the early Middle Ages. The German tribesmen, although consolidated into a confederacy called the Holy Roman Empire, maintained a strong feeling of kinship and of loyalty to their tribal leaders in the so-called "stem Duchies." So strongly did this persist that even the creator of the modern German Reich, Bismarck, could write in his memoirs that the German people were unique among Europeans for their attachment to these "stem Duchies" rather than to the artificial creations of modern statecraft. It was but a step from this to the theory of the Nazi—that German blood was the real cement for the Ger-

manic peoples and that personal loyalty to a chieftain was the supreme test of citizenship.[1]

It is only when we contrast this trend of German history with that of England that we realize how they are worlds apart in the appreciation of political institutions. England, although saved by its surrounding seas from the constant danger of invasion, was overrun by successive floods of invaders in the early Middle Ages who, however, were not numerous enough wholly to supplant the native inhabitants. Coming by sea, they had been obliged to break their kinship ties to a great extent, and when they settled on the soil of Britain to make it England, their settlements (tuns) became the nuclei of self-government. Thus, little democracies were born which preserved their liberties to an astonishing extent throughout the whole feudal period which followed. All the local officials were elected by the community. From these small units of self-government there is an almost unbroken line to the New England town meeting. The body of the English people retained with stubborn tenacity these humble but important rights, recovering them after periods of anarchy or tyranny almost as if they were the expression of a law of nature itself.

6. KINGS, PARLIAMENTS AND LAW COURTS

The interest of Americans in the history of democratic institutions tends to distort the true perspective of European history; for it was not until modern times that those institutions were really powerful enough to play a dominant political role. Although in the seventeenth century, when the English were maintaining their liberty against the Stuart kings, their historians and lawyers looked back to Magna Carta as having established the fundamental principles of the rights of the Englishmen, historians now view it on a less exalted plane as a document that was rather reactionary than progressive, so far as the feudal barons were concerned. Because King John had abused the royal power the barons temporarily resumed the task of State-building, which King John's father, Henry II, had so strongly developed. The history of England was thus presented so as to subordinate unduly the role of kingship. There was, of course, the admitted

[1] It should be added, however, that no other nation has shaken up its tribal residues as fast as Germany in the twentieth century. The Nazi attitude has been a throw-back.

exception of Edward I, "the English Justinian," but in England no less than on the Continent the dominant fact in the political evolution of the nation from the thirteenth to the seventeenth century was the part played by the King in the destruction of feudalism and the realization of national unity.

When under the Plantagenets in the twelfth century, the kingship became the symbol of national union and circuit courts dispensed the King's justice throughout the land, the English people were at last ready for the great experiment of national representative government with the King making the law through Parliament. The growth of the powers of Parliament opens too vast a field to be explored here, but there is one aspect of it that may be kept in mind in judging the institutions of today. At first, no one thought of Parliament as making laws; the King alone was, and still is in legal theory—acting upon the advice of Parliament—the law maker of the country. It is the old French formula "le roy le veult" which translates the wishes of Parliament into the laws of the nation. The way this came about is interesting. At first, all that the House of Commons ventured to do was to present a statement of its desire in the shape of a humble petition to His Majesty for redress of grievances which the King then took into consideration and dealt with as seemed best to him. Then came the Hundred Years' War and the King needed more and more money. Parliament, therefore, became more self-confident, and when Henry IV called it together to vote him money for the continuance of the war, Parliament presented its "bill" in the exact terms in which it wished it to be carried out. In other words, the King was to "sign on the dotted line." Thus a bill of Parliament became an Act of Parliament, and the precedent was established for the procedure of representative government to this day.

This book does not propose to cover the history of the great English experiment to establish a government under liberty which, until recent years, was held everywhere to be a model for the world. It is necessary, however, as we turn back to the Continent, to keep in mind the fact that there is "an English way" of government which is deeply rooted in its own past but exceedingly responsive to the changing influences of time and circumstance. This last fact is perhaps partly due to the absence of a written constitution, a fact which has led the English to put more emphasis upon political and less upon juristic or legal relationships. The nation which holds itself together by contracts

that are subject to judicial interpretation is naturally more rigid than one which in theory at least can change its fundamental instruments of government by the enactment of a law. And yet, the unwritten law of England which falls back upon precedent is perhaps as strong a safeguard of conservatism and as great an impediment to oft-times needed reform as the written constitution which limits such action in countries like the United States. The one thing which the English method has produced, however, to make its government both effective and responsive to the general will is that public spirit of its citizens to which we made reference above. The British have a sense of responsibility as members of a commonwealth which first found strong expression in the Great Revolution of 1688 and has increased with each reform bill enlarging the electorate until it includes the whole nation. Lecky's despondent prediction on the passage of the Reform Bill of 1867 has not come true: that one could not expect a country to be well governed when it is governed by its least intelligent citizens, namely, the mass of the English people.

The history of France presents the role of kingship in the molding of the State in a clearer outline than does the history of England, because the kings of France had a much harder task. They had no William the Conqueror to look back to, unifying the country under a strict military regime, as had been the case in England; and the territory to be united under the Crown was not only very much larger but more diverse and ruled by feudal lords, whose coalitions might prove as strong as those of the King himself. Royalty in France had three advantages. In the first place, the kings were anointed with sacred oil at their coronation in the cathedral of Rheims; and this marked them off by a kind of eighth sacrament from all other Frenchmen; in the second place, their territories were more strategically placed than those of other feudal lords, being centered in the Ile de France and along the Valley of the Seine, with its converging riverways for traffic. The third advantage grew out of the second; the rise of commerce had, by the thirteenth century, created a money economy—the feeble beginnings of modern capitalism—which enabled the wealthy feudal rulers, and especially the King, to purchase services instead of relying upon feudal dues. The thirteenth century, which built the great cathedrals of France and therefore gave the external semblance of religiosity, was erecting institutions of government as outstanding as its churches, when for instance, Louis IX—St. Louis—made over part of his royal palace

on the island in the heart of Paris to the lawyers and the law courts, where they still are. The Sainte Chapelle, built by him to enshrine the Crown of Thorns, still holds its miracle of beauty for the lover of art, but the Conciergerie, once the gallery for the guard that watched over the safety of the King, was destined to be the prison of Louis XVI.

The law courts of France thus so highly favored by royalty as an ally in the war on feudalism came in the course of time to serve as a check on royalty itself, from the civil war of the Fronde in the middle of the seventeenth century—which almost synchronized with the Civil War in England—to the French Revolution. The Hundred Years' War and the subsequent anarchy in France had prevented the development of a national French Parliament. The States-General, which had made such a promising beginning in 1302, had never gained control of the purse, meeting only at irregular intervals and never at all from 1614 to 1789. The law courts, especially those known by the confusing title of "parlements," more especially the "parlement de Paris," through the registering of royal decrees paralleled to some extent, though inadequately, the functions of the English Parliament, as a check upon the arbitrary rule of the King.

This fact should be kept in mind in the study of the government of France today. As is pointed out in the section of this book dealing with that government, the French still provide not only for the independence of the judiciary by a separation of its powers from interference by the other branches of the government, but give it a somewhat wider field of action. The English courts, it is true, make "case law" by their decisions, but in the interpretation of statutes Parliament leaves little discretion. French laws are for the most part framed in rather general terms, stating clearly the intent and purpose of the law and leaving it to the administrative and judicial organs of the government to give effect to that purpose. Perhaps it should be added that the technique of legal formulation in France shows traces of the heritage of Roman Law. Until recently, Acts of Parliament, on the contrary, and still more Acts of Congress of the United States, were frequently drafted to cover every imaginable point raised by the law, and thus to ensure that the purpose would be carried out by prescribing in detail for its application. With the rise of great government departments and an ever-increasing number of public servants this practice has been changed to allow wide discretionary powers wherever necessary for effective administration.

This "delegated legislation," as it is called, "is a natural reflection, in the sphere of constitutional law, of changes in our ideas of government which have resulted from changes in political, social and economic ideas, and of changes in the circumstances of our lives which have resulted from scientific discoveries." [1]

This is but one of many points of difference between the systems of government of France and England, the two great countries of Western Europe in which royalty, having emancipated the nation from feudalism, was in turn obliged to surrender its power to the great institutions of self-government, law-making and the administration of justice. But there are others that should be noted, which are equally rooted in this parallel but varied history of the two countries. Above all, there is the attitude towards executive or administrative bodies, those whose duty it is to carry the laws into effect. As for France, it is perhaps not too much to say that the country has never wholly recovered from the despotism of the Old Regime, that despotism which was worked out by Richelieu, Mazarin, and Colbert on the foundations laid by Louis XI. It was a ruthless centralizing process which culminated in the "Divine Right of Kings." Thus the reform which substituted royal offices for feudalism, while it united France, failed to recognize the real force which held the country together, that of the rising Middle Class. Whereas in England, from the Great Revolution of 1688, this class believed, although often wrongly, that because it held the purse strings of the government and therefore could identify itself with the officials of the Crown, in pre-revolutionary France these officials were the symbols of autocratic rule. The tradition remained, however, after the Revolution and has lasted to this day. The citizen, instead of co-operating readily with the bureaucracy, has felt more or less justified in evading to some extent its demands. French liberalism which found its fullest expression in the doctrine of "laissez faire, laissez aller,"—that the best of governments was that which governed least,—carried on into the nineteenth and even into the twentieth century the protest against too great administrative interference with private life, a protest which often takes the form of unduly deprecating the competence of the existing government. This is perhaps one explanation—but only one—for the point noted above, that public spirit is less evident in French political life than it is in England, where the citizen feels instinctively that he has a voice in the passing

[1] K. B. Smellie, *A Hundred Years of English Government*, p. 267.

of the budget and therefore must not evade taxation. The Englishman's belief is based upon his confidence in representative government; and even if this confidence may at times be abused, it is one of the greatest assets in securing effective interplay between the government and the citizen. In France, this interplay is lacking to some degree, partly because of its history, and partly because of a different conception of the nature of government to which we must now turn.

7. THE HERITAGE OF ROME

Underlying the whole trend of history that we have been examining, there is something deeper yet which marks off the Continental way of thinking of government from that of the English and American tradition. We have referred to it above in pointing out the contrast between the political ideas of Latin America and of the United States. It is, in a word, the contrast between Rome and Britain. There is no more impressive fact in history than the way in which the splendor of the Roman political achievement lasted on as a memory and an inspiration for those at the close of the Middle Ages who learned over again the lesson of antiquity in the theory and practice of government. It was not by chance that the first great university, that of Bologna in the early twelfth century, which opened its doors to the students of law who flocked down over the Alps from Northern Europe to sit at the feet of Irnerius, was devoted to the study of Roman Law. These students of the revival of jurisprudence took back to the courts of the northern rulers the principles of private and public law which had been evolved in ten centuries of experience by a people uniquely endowed with the capacity for political organization. If kingship led in the movement against feudalism, Roman Law supplied it with the maxims of government in such colorful expressions as *quod principi placuit legis habet vigorem* (what the king wishes has the force of law) or even *princeps legibus solutus est* (the king is not bound by law). "L'État c'est moi" was already implicit in the maxims of Justinian. We have already seen how the jurists served the cause of monarchy in France. But the rulers of Germany also sought to profit from those who could put their house in order to strengthen their prerogatives. Unfortunately for Germany, there was no one monarch to be served as in France; but

Electors, dukes, and even bishops, rivalled the Hapsburg Court in strengthening their sovereignty through the "Reception of the Roman Law."

The effect of this systematizing of government should not be over-estimated, however. The process of what might be called "modernization by way of antiquity" was ultimately fused with the humanism of the Renaissance and found a lasting place in the cultural as well as the juristic history of Europe. But political progress was blocked by the disastrous series of wars that followed the Protestant Reformation and the resulting anarchy, especially in Germany. The only lesson in government that had a chance of being applied was that which emphasized the power of the ruler; as is always the case when wars are imminent. This would probably have been equally the case if the Hapsburgs had won the Thirty Years' War instead of having to surrender so much of the prerogative of empire in the Treaty of Westphalia in 1648. For if the theoretical successor of the Caesars had been the victor, it would have meant the triumph of a reactionary war-lord whose power rested on a vast combination of feudal holdings and who had little to gain from the erection of a unified State, with the Diet refurbished into a legislative body with life in it. The Emperor, who was also Duke of Austria, and ruled at the same time a whole series of other duchies as well as the Kingdom of Hungary, was not yet beyond that early stage in the evolution of government which Rome had reached in its policy with peoples not yet within the State—*divide et impera*—rule by keeping the subject peoples apart. Moreover, the exigencies of war which prevent the growth of civil institutions, would not have been ended by a unification of Germany at the close of the Thirty Years' War. The greatest menace of all, the Turk, was still threatening Vienna, and he besieged that city in 1683. As we shall see below, "the Germanies," as Madame de Staël used to call them, were the homes of frontier peoples, and the precepts of Roman military and bureaucratic rule fitted them better than the peaceful processes of an English parliamentary system.

Nowhere else was the influence of Rome upon theories of government more clearly shown than in the writings of Machiavelli, that realist of the Renaissance who has been termed the schoolmaster of despots. Machiavellism has been the synonym for ruthless and unscrupulous action in which the end justifies the means. The philosophy of government which includes not only force but treachery denies implicitly the principles of Chris-

tian morality and bases government both at home and abroad upon the cunning use of intelligence to evade the consequences of ill-doing. While these implications may be found in Machiavelli's manual, *The Prince,* addressed to the ruler of a small Italian state, as practical strategy in a world where such practices were common, Machiavelli's political philosophy had a wider range when taken as a whole. For it was as a student of Livy, upon whose history of the Roman Republic he wrote an extensive commentary, that he sought to apply the lesson of the evolution of that unique creation of antiquity to the problems of the stirring age which was so rapidly turning from Medieval Europe to a new state system—a system the character of which no one at that time, the early sixteenth century, could foretell.

There are at least two outstanding reasons why in spite of his revolt against Christian morality, Machiavelli has exercised such an attraction on the minds of those statemen who were primarily men of action. In the first place, he was not an abstract thinker but looked to character and the mental caliber of individuals as the motive forces in history. This Roman way of analyzing politics is well brought out in his flat denial of the theory that economic resources can hold their own against armed might. He devotes quite a section of *The Prince* to a warning against what he views as the false theory that the ruler should take as his prime objective the increase of the wealth of his State; because this would only invite envy on the part of others better armed and looking abroad for plunder. This conclusion naturally rests upon the second of the two ideas which recommended it to the more practically minded statesmen of his day and later. For the whole Machiavellian system of philosophy rests upon the war system as the fundamental basis of sovereignty. This second lesson of antiquity, that war was the prime instrument of politics in the relations of states and rulers with each other, at once shows up the weakness of Machiavelli's historical analysis of what happened to Rome. His chief interest in its history was in that long period of conquest in which for century after century there were always new victims to pay the costs and maintain the splendor of the processes of imperialism. Machiavelli is not to be blamed for having failed to trace this process through to the downfall of the Roman Empire when there was no more tribute to be wrung from the conquered and no adequate means had been worked out for maintaining the vitality of the antique world. It is only now that we are beginning to realize that the

fall of Rome was primarily due to the fact that this exhaustion of resources led to an intensification of the very evils from which it was suffering as the army took an ever larger measure of control. As the civil administration lost its initiative, bureaucracy grew both in extent and in inefficiency. In short, the one great lesson which the antique world had to offer to the modern state system, namely, that war is the most delusive basis upon which to build the permanent strength of a nation, was never seen by Machiavelli. For police purposes, for defence, and for the assertion of fundamental rights denied it, the modern state is obliged to maintain military and naval establishments so long as the present anarchy of nations lasts. But when Mussolini, the outstanding Machiavellist in the world today, states, as he has done recently, that the normal condition of nations is not peace but war and that all their economy should be geared to war needs and not to those of peace-time prosperity, he is issuing a challenge not only to peace-loving democracies but to the whole process of economic evolution from the ancient world to our time. The man who challenges so vast an experience of history may escape for a time the consequences of his folly, but his country and other lands as well will ultimately pay for it.

8. GOVERNMENT AND LIBERTY; THE MIDDLE CLASS

While Machiavelli was looking back to Rome for the ideals of government and around him in the little sovereignties of Italy for their application, a world event was taking place,—the first world event in history,—which was to dwarf forever the petty, local politics of Europe. The era of European expansion had begun with the discovery of America and the opening of the sea route to the Far East. The Commercial Revolution which followed swung the center of power from mid-Europe and the Mediterranean to the countries that lie open to the ocean trade. Old Italian cities like Florence, which had played an important part in the origins of modern capitalism, in the technique of banking and the beginnings of modern commercial associations, situated, as they were, off the track of this trade, were left to dream of their medieval importance and of their splendor in the Renaissance. The thing that Machiavelli rejected as not only secondary to soldiery but a deterrent to princes—money, became the greatest political force in Europe with the influx of gold and

silver from the New World and the rise of the Middle Class, armed for power with new means of banking and credit in what came to be known as modern capitalism. It was this economic fact, and not Machiavelli, which gave the direction to developments in government in the three centuries which followed; although, as we shall see, his influence continued to show itself in those countries where war remained the prime interest of rulers.

It is impossible to trace the long process of this revolutionary movement which opened up the modern problems of government, for that would mean passing in review almost the whole political history of all the countries which led in the movement, more especially England, the United States and France. But that history has generally been written from the standpoint of today and not from that of the time when the events took place. Pride in the achievements of the forerunners of liberty and democracy is justifiable enough, but it should not blind us to the difficulties which royalty, as a survival of the pre-capitalistic age, had to face in carrying on the functions of government. With the influx from America of more gold and silver than Europe had in circulation previously, prices went up everywhere several hundred per cent. The cost of government naturally increased proportionately, and the question of taxation became vital. The kings could not govern if they could not meet the ordinary expenses, let alone the cost of such new enterprises as war. Yet it was just at this time, when the business of kingship was becoming most difficult, that it advanced its most extreme claim, that of Divine Right. There was no answer as yet to this claim in France, nor for a century more, when finally royal bankruptcy,—partly caused by help to America,—brought the triumph of the Middle Class; for that is the real meaning of the French Revolution. But in England middle-class opposition to royal prerogatives had the advantage of dealing with foreign, i.e., Scottish, kings, the Stuarts. James I came to London trained in the Roman ideas which were the product of Scotland's relations with the Continent, especially France. He came to an England which was vibrating with a new sense of nationalism, the spacious age of Elizabeth merging into the stern, self-conscious temper of puritanism, where the purse-strings of government were held by a parliament doubly aware under rising prices of the burden of taxation. Parliament, therefore, became the leader of the Middle Class against the King; but the legal bases of its case against royal exactions lay in the revival of old English law which was then taking place. In the conflict

between the Roman principles, abstract embodiment of logic, and the Common Law, concrete embodiment of ways of living, the Common Law won not only for England then but for those who cherish liberty everywhere.

The English jurist who thus found in the Common Law the best defense of English freedom because in its uncodified confusion it never dealt with liberty in the abstract at all, but dealt with real situations as they arose, was Sir Edward Coke, in whom, to quote Maitland, the historian of English law, "the Common Law had taken flesh." It was the jurists of his day who made Magna Carta a real palladium for the liberties of later days by interpreting it as an active principle of law. The Petition of Right of 1628 made illegal the levying of taxes by the King without the consent of Parliament, or imprisonment for not paying them. The issue was now definitely joined between Middle Class and Royalty; after sixty years of struggle it was finally resolved in the Bill of Rights of 1689, which gave expression to the principles of the Great Revolution of the previous year, and furnished both justification for the American Revolution almost a century later and inspiration for French writers of the Old Regime. Macaulay insisted that this most revolutionary of documents did not make any positive change in English law; but the system of government which it inaugurated, providing for middle class rule under a limited monarchy, had other supports than those of Coke's re-interpretation of precedent. It had also, among others, the writings of John Locke, whose *Two Treatises of Government* were published in 1689. Royalty, he said, rests on a contract with the people; and the contract is broken when personal liberty and private property are in danger. The King cannot be a judge of when rights are violated; the people must decide. The way to make secure life, liberty and property—Jefferson gave a Virginian touch in changing this to "the pursuit of happiness"—would be by separating the powers of the executive, the legislative and the conduct of international affairs, which he termed the federative function of government. The executive and the judiciary were not separated, and Parliament was to be the supreme power in the land. Locke's arguments are worth recalling not so much for their effect in England as in France and America. For one thing, it was primarily the influence of his thinking upon George Mason of Virginia which resulted in the Bill of Rights, first in the constitution of that state and others, and then in that of the United States. Then, strangely

enough, this recital of the safeguards against the tyranny of governments was the one traceable influence of the American Revolution upon that of France.

9. FRENCH RATIONALISTS AND THE BENEVOLENT DESPOTS

The influence of Locke and the galaxy of English thinkers of his time did not have to await the period of the Revolution, however, to contribute to the current of French thought upon government. It was above all Montesquieu, one of the first to study comparative government by careful researches in foreign countries, who in 1729 found, or thought he found, in England what he had been hunting for, "liberty and equality," a phrase that was to become the slogan of the Revolution. His *Spirit of Laws,* which contained the essence of his philosophy and was especially designed to safeguard the bench against royal encroachment, was destined to have a prodigious effect. Voltaire said of it "The human race had lost its title deeds; Montesquieu has just found them again." But his study of the English form of government, which he most admired, led him to round out the theory of the separation of the powers, in a formula which implicitly challenged the theory of absolutism, that of the separation of executive, legislative, and judicial organs of government. The simplicity and clarity of this scheme for preserving liberty, while allowing government to function normally, recommended it to the Fathers of the Constitution of the United States, to which it gave the peculiar structure known as the American system. But no Government in Europe was ever framed on this model.

The other outstanding influence upon the political thinking of pre-revolutionary France was, of course, Rousseau. Voltaire's writings bore less upon the structure of government than upon its actual conduct; he was the defender of the persecuted and the opponent of oppressors, but not the revolutionary enemy of the established order. Rousseau went the whole way. The opening sentence of his *Social Contract* rings with a challenge to King and State. "Men are born free and are everywhere in chains." He then proceeded, as others, especially the English thinkers had done, to develop the idea of society as held together by an implied contract between the ruler and the ruled. But Rousseau presented his thesis as a threat to the established order, because evidently the contract had not been kept by government which

no longer made the general welfare its chief concern. We need not linger over this political theory, however, for Rousseau's influence was only revolutionary. It inspired the Jacobin; but it was never used as the foundation for a lasting and stable edifice of State.

Those who put into operation the theories of the French *philosophes* were the benevolent despots and their ministers to whom we now turn. First of all there was France itself. As for Louis XIV, he worked hard and conscientiously at the business of kingship, fitting in his affairs of State with the ceremonies of the court in the same tireless way that Francis Joseph of Austria did three centuries later. Taking over the task of a Sully, a Richelieu, or a Mazarin was not easy. Fortunately, Louis XIV was well served by such a minister as Colbert, who was a master of detail. The *intendants* in the provinces brought some semblance of royal authority into the confusion of jurisdictions. But the scandals of Louis XV and then the incompetence of Louis XVI made the work of enlightened ministers like Malesherbes and Turgot more a foretaste of reforms to come than an achievement of what was needed—a recognition of the rights of the Middle Class, the Third Estate. It was left for a Sieyès in 1789 to formulate the idea "The Third Estate is the nation," an idea which was put to the test in the transformation of the States-General into the National Assembly. Despotism in the eighteenth century in France was, upon the whole, benevolent in intention, but oppressive in fact; the work of the *philosophes* was less effective in reform than in revolution.

It was different in Central and Eastern Europe. Throughout the eighteenth century the fashions of all courts and capitals were set by the French. The lasting marks of this influence still remain in the museums and the architecture of public buildings throughout Central and even Eastern Europe. But perhaps even more striking than this was the influence of French rationalism upon the rulers of the countries east of the Rhine, especially in Austria, Prussia, and Russia. The idea that a prince should be "the first servant of his people" is centuries older than the writings of the *philosophes,* but they gave it currency and forceful expression. The application of this principle, however, was much more difficult in France, where loyalty itself was so deeply enmeshed in the complications of an outworn feudalism, than in a small country like Prussia, where the military tradition prevailed, or even, so far as externals went, in Czarist Russia, which was accustomed to

take orders from an autocratic Czar. The Hapsburgs of Austria, however, were faced with a task even more difficult than that of the Bourbons, and the extent to which Maria Theresa, and especially her son Joseph II, modernized their ramshackle empire shows what might have been done in France if Louis XVI had been an intelligent and energetic sovereign. Neither France, on the West, nor Russia, on the East, was destined to embody this ideal of benevolent despotism in permanent form; France followed the path of revolution and Russia that of reaction. But in Prussia and Austria the reforms in administration due to the "era of enlightenment" lasted on to the twentieth century. The reasons for this are not to be found, as a Machiavelli would have us believe, in the individual capacity or unscrupulous cunning of Hapsburg and Hohenzollern rulers, although these qualities were not lacking in the course of their history, but in the peculiar situation and needs of the countries themselves.

10. THE PROBLEM OF GOVERNMENT IN EAST CENTRAL EUROPE

Both Prussia and Austria-Hungary have always been frontier countries on the Eastern borders of Europe.[1] Prussia was the spear-point of the age-long thrust of the Germans against the Slavs, from the days of the Saxon emperors in the early Middle Ages. Austria was the outpost of the Teuton against the barbarian raiders of the Danube valley, and then, with Hungary, the joint defender against the most powerful invader that ever attacked Europe, the Ottoman Turk. It was inevitable, therefore, that these dangers of the frontier should affect the form and nature of government of both Hapsburgs and Hohenzollerns. The failure of Slav and German to settle down within agreed limits of territory and live alongside each other as good neighbors did not, it is true, present Europe with the recurring threat of war that came to southeastern Europe from the failure of the Danubian and Balkan peoples to adjust peaceably the partition of the former empire of the Turks; but in both cases, as happens wherever the frontier is unsettled, the army had first place in the thoughts of both sovereign and people. This situation, which has so much

[1] It should be kept in mind that this is not a sketch of Central European history but an explanation of some of its peculiarities of government. Bavaria and the Rhineland had differing political histories and political civilizations. Both Germany and Austria were countries of widely varying outlook and culture. The problem here is what were the dominant trends in government.

history behind it, much more than the recent sea rivalry between Germany and Great Britain for world empire, has offered the German people the continuing justification for militarism. There is also the "watch on the Rhine" against France, but that danger was no longer real for Germany, after its unification, except as the storm might break—as it did in 1914 and again in 1939—on the southeastern or eastern frontier, and France be drawn in owing to its commitments there. In spite of the present entente between Nazi Germany and Communist Russia, the situation there remains substantially unchanged, in the matter of security, from what it was in the seventeenth and eighteenth centuries.

The characteristics of government under Hapsburg and Hohenzollern were therefore bureaucracy and militarism; for these two go readily together. As for the civilian administration, it will be recalled that in connection with the "Reception of Roman Law," at the end of the Middle Ages, the statement was made that German princes profited from the work of the jurists fully as much, if not more than the Kings of France. Both in Austria and Brandenburg the profession of the jurist prospered and these specialists in administration were used to good advantage; and they not only strengthened the civil bureaucracy but furnished an almost hereditary caste to fill its offices. In Prussia, the more business-like of the two monarchies, these bureaucrats might even reach the highest offices of state; the war-time chancellor of Imperial Germany, Bethmann-Hollweg, was a perfect representative of this type of servant of the Crown. It must be said that they justified their position in the State by both their efficiency and their self-effacing loyalty which accepted without question their social and political subordination as a class to the nobility, while the latter was as a class wise enough not to interfere with the routine business of bureaucratic government.

But any reader of Bismarck's memoirs will recall that, while he pays a fair tribute to the competence of the civil bureaucracy, he claims that, at least for Prussia, the chief influence in maintaining the high standard of efficiency was not so much its own traditions as those of the army. Nowhere else has such clear light been thrown upon the historical background of Nazi ideas as in these Bismarck memoirs, where he points out the influence upon the Prussian mind of the sense of duty to the sovereign and the State—above all to the dynasty—which is the keynote of Prussian militarism. The unquestioning obedience with which the Prussian soldier accepts the orders of his superiors, even if he knows

that they may mean death, was in Bismarck's eyes the greatest and best of all the influences making for stability in the Prussian State. For the Junkers, whose broad acres lay along the Slav frontier, this point of view was not open to question. It was no wonder, therefore, that the Junker who united Germany should look to the sword rather than to a liberal movement of the German people such as that which, in 1848, dreamed of doing what the French people had done for themselves in 1789. The bureaucracy which from the days of the Great Elector—the real founder of Prussia—received recognition along with the army, had no such career of glory as the army of Frederick the Great or that of the War of Liberation. The humdrum task at which it persevered was essential but not dramatic. The Prussian historians and political theorists of the nineteenth century therefore reflected public opinion when they exalted military service for the State as a supreme merit of the citizen. It was but a step from this to their claim set forth by both historians and statesmen, which is so difficult for any democratic people to understand, that the truest expression of liberty itself is to be found where it is most denied, in the profession of arms. That this is not the mere rhetoric of a paradoxical professor but a summing up of the trend of a nation's attitude is only too clear in the light of recent events. Behind it, however, lies a long stretch of history of which the unification of Germany by blood and iron was only one, if the outstanding, episode.

The disappearance of the Hapsburg Monarchy from the governments of Europe today makes it unnecessary for us to trace here the history which lies so closely parallel to that of Prussia. As long as it lasted, the army was the symbol of its unity, while the bureaucracy occupied a secondary place, yielding much more to aristocratic influence at the Court and throughout the country at large; but the concept of government as the embodiment of power was the same in both countries. Parliamentary institutions were only secondary to the efficient management of affairs of State by ministers of the Crown and their subordinates.

A wholly new situation developed in this part of Europe as a result of the World War. The border land between Eastern Europe and Russia, which we have referred to as the age-long unsettled frontier, then took shape in a whole series of "free nations" from the Arctic Sea to the Mediterranean. Self-determination had loosened the hold of the Hapsburg and Hohenzollern upon the non-Germanic peoples, whose most eloquent

spokesman at the time was Professor Masaryk, the first President of Czechoslovakia. A close student of the democratic ideals of Thomas Jefferson and of the history of American institutions, he proposed to introduce them as both the expression and the safeguard of the newly won liberties of the smaller nations. Unfortunately, these nations of the Eastern fringe were neither trained by experience to work out compromises instead of conflicts as a first prerequisite of a healthy political life; nor was their idea of the State one that recognized the essential need for compromise, framed as it was on the German concept of absolute sovereignty. Thus their equipment for self-government was weakest at the point that was sure to be tested most at a time of transition; for the political revolutions which had created these states disturbed the conditions of life and these could not be readily adjusted to their new framework. It was this situation and not any lack of capacity for self-government on the part of the non-Germanic peoples which was responsible for their failure to live fully up to the high standards of Masaryk's democratic ideals and statesmanship.

The judgment on this situation commonly held in Vienna as well as in Berlin, that the non-Germanic peoples were inferior to the Germans in the management of political affairs, has been rendered more than suspect by the recent renunciation of political capacity on the part of the Germans themselves. While history has not yet registered its full verdict on this issue, it has already shown that the three nations which are furthest from kin to the Germans—the Turks, the Magyars and the Finns, all of them coming from the heart of Asia—have, each in its own way, remarkable achievements to their credit. There is no more striking chapter in the history of politics than that of the transformation of Turkey in our own time from a quasi-feudal regime, based on the military occupation of conquered territory, to a modern State. The Magyars have another history, that of the easy mastery of one of the most delicate of political systems, a combination of diplomacy with oligarchic parliamentary government. A long line of great statesmen has shown that this people can maintain its identity although islanded among others, none of whom can speak its tongue. As for the Finns, cousins of the Magyars, their triumphs in democratic government were as notable as the defense of their country against Stalin was heroic. The Bulgarians, partly Asiatic, partly Slav, have at least produced a Stambulisky, and the Greeks a Venizelos. The Serbs have only now

begun to come out of the isolation of the Middle Ages, where they were kept by the Turk, and the Poles were without any experience in modern self-government; but to judge from these facts that the Slavs are lacking in political capacity is as absurd as to say that the English lacked it prior to the seventeenth century, or the French prior to the French Revolution.

The problem of racial aptitudes lies outside this study; but in view of the fact that Central Eastern Europe is likely to be a laboratory of experimentation in politics in the coming years, it is well to recall that not only is it an area where the mixture of peoples is almost as great as in the United States, but that history rather than biology explains their present situation.

The Commercial Revolution of the sixteenth, seventeenth, and eighteenth centuries left these east European peoples in the backwash of the great currents of capitalistic developments through overseas trade. The Industrial Revolution has only now begun to readjust this situation by the use of railway and motor and air transport, giving access to raw materials and markets in the interior, so that just as Chicago has rivaled New York, Moscow may rival London. The routes of the caravan are again avenues of trade. The significance of this should not escape us. Without underestimating the economic advantage of sea traffic, the current of history is turning landward again as well; and Hitler's conquest of Czechoslovakia and Poland as well as his alliance with Soviet Russia are part of an effort to control this movement from the European end. This is more than a Mittel-Europa; "Berlin to Baghdad" is but a fraction of it. It is an imperialism of the proportions of Asiatic empires and cannot be held in check from the outside. The only permanent defense against it lies in the so-called "backward peoples" who would themselves be submerged in it. The future of Europe and of the world will depend upon them quite as much as upon the ambition of Nazi Germany.

The conclusion seems to be that the small nations must unlearn the political theory of absolute sovereignty which they accepted from nineteenth century Germany, and find strength in that form of co-operative unity which has a place for compromise. All history shows that liberty is an imperishable attribute of life itself; but freedom cannot be treated as a monopoly to be denied to others. It is only effective when it can be shared; and it can only be shared when there is no danger of losing it.

There is only one political system in the world which has

for its aim this very interplay of freedom and power, the federal system. It is strange that Continental Europe has never taken it seriously. Outside of Switzerland it is not to be found as an essential basis of the State. The main trend of European history has been toward centralization in government. This has been especially true of France, but it has also been perhaps the greatest achievement of Hitlerian Germany. To some extent centralization was a reaction against the anarchy of small States in feudal times, but the more recent developments have been rather a reflection of the unification of a nation's business under modern conditions, and the rise of new economic and social problems that call for national treatment, as in the United States. In the case of the British Empire, however, the trend has been in the opposite direction, toward a looser federation in the British Commonwealth of self-governing nations. In the eyes of Continental statesmen this is a "ramshackle" State, about to fall to pieces. They fail to see that it is held together by the very liberty which seems to weaken it. No one can tell what hidden strength that liberty supplies in bonds of common loyalties. Of one thing the British are sure, however, that the Commonwealth will not break up because it is free.

Now what bearing has this on the problems of government of Eastern Europe? It is fundamental. There are minorities in every State. So long as they are denied recognition they regard the government as hostile. To secure loyalty in the opposition, as in England or the United States—or in any genuinely parliamentary system—it must have fair and impartial treatment. As it is difficult to know whether this is the case or not, unless there is free expression of public opinion, it follows that a federal system functions well only under a regime of liberty. That is why the federal system of Soviet Russia cannot be regarded as a genuine example of federalism in spite of its external framework, as is clearly shown in the description of the government of the Union of Socialist Soviet Republics. The Communist Party exercises a control in reality which dominates the forms of government. Nevertheless, it must be recognized that Soviet Russia did give a formal expression to Federalism in Eastern Europe, especially in its recognition of the rights of nationalities, correcting in this regard the mistakes of its neighbors. It would seem, however, as though this relatively generous trend in Soviet political philosophy had been definitely left behind when Stalin made friends with Hitler.

But it is not merely the internal conditions of a nation which

determine whether federalism can flourish there; for the liberty which is the condition of its very life depends as well upon the extent to which a country can rely upon having peace with its neighbors. In proportion as there is danger of war, liberty is curtailed and its institutions wither and die. We are, therefore, brought from the study of internal politics to that of international relations. Here, again, it is now clearly seen by all competent observers that there can be no guarantee of lasting peace without institutions for dealing with international problems and settling disputes. Whether the Balkan Entente will grow into some sort of Balkan Federation, whether the suppressed liberties of Czechoslovakia, Poland, and Scandinavia will be restored and co-ordinated with the interests of their neighbors, are questions for the future to answer. But unless the nations of Eastern Europe learn the lesson Masaryk tried to teach out of American experience, they must inevitably make way for a greater unitary movement from Central Europe than has yet appeared, backed by the full weight of an industrialized empire. Federalism would save them, but it presupposes peace based upon justice.

11. THE ENGLISH MODEL

The new national states which emerged upon the theatre of history in the nineteenth century did not feel themselves fully equipped for government without legislatures modeled more or less consciously on the Parliament of Great Britain.[1] Never was the prestige of the British political genius so high as in the period which saw the unification of Italy and of Germany. The Industrial Revolution which brought the middle class definitely to power in Western Europe was spreading with giant strides across the Rhine and down the Danube, creating a new Middle Class and a new proletariat. Social and economic questions came to the fore; in the discussion of these the people concerned were demanding a part. The unification of Italy also evoked, though in different terms, the ideal of representative government as a symbol of liberation from the reactionary rulers whose overthrow finally brought to Rome Victor Emmanuel as King, with a parliament on the English model.

[1] It has been impossible in this short introduction to deal with other parliamentary institutions dating from the Middle Ages, as in Spain, Scandinavia, and Hungary.

For half a century and more parliaments were accepted everywhere as fundamental elements in the structure of Continental governments. No one questioned that they had as definite a place as the executive, judiciary, or even the army. In France, after a long and tortuous history, Parliament finally asserted its supremacy over the other branches of the government in 1877, when it forced the hand of the President. Again, ten and twenty years later, in the Boulanger and the Dreyfus affairs, it took definite and final control over the army. These events are described in detail in the pages which follow; but it is not sufficiently well known that the distrust of "the man on horseback" which finds national expression in the French Parliament made that body a bulwark of "the Rights of Man and the Citizen" in the crisis of the World War in quite the same spirit as is the case with the English Parliament. By September, 1915, that part of France which was not in the direct path of the war itself was given back to civilian administration except for the "exceptional cases" which had to do directly with the military defense of the country. Also, when General Joffre attempted from his headquarters at Chantilly to extend the action of the General Staff from the sphere of war into that of diplomacy, owing to the extension of the battle front beyond French territory, it was the Parliament which forced him back into the strictly military field. In short, France under the Third Republic advanced to the position of a distinctly non-militaristic country.[1]

The contrast with Germany in this regard is striking. There it had not been the Prussian Diet or the Reichstag which had kept the military leaders in their place, but Bismarck himself, whose struggle to keep the control of policy in his own hands had been critically challenged after each of his two great wars, that with Austria in 1866 and that with France in 1870. How well he succeeded is an open page of history. But when militarism is embodied in a continuing institution, the Bismarcks capable of standing out against it are few and far between. The limits he set for the General Staff, those of strictly military affairs, were set for the armies and navies of France and England by permanent bodies responsible to the nation, which kept on growing in power with the growth of democratic institutions. It is true that in all four countries, Germany and Austria-Hungary as well as England and France, the military establishment was theoretically

[1] In the war begun in September, 1939, however, Parliament hardly functioned, having given the Premier *pleins pouvoirs*.

subordinate to the civilian government, but the ministers in the Central Powers were the creatures, not of parliaments but of emperors who were also war-lords. Under an impulsive William II or a tired old man like Francis Joseph, a well-meaning bureaucrat like Bethmann-Hollweg, or a reckless gambler for power like Count Berchthold, followed without sufficient thought of the consequences the old tradition of politics of power.

As in the history of England under the Stuarts, control of the purse was of fundamental importance in the control of policy. In his struggle to secure a military budget free from the criticism as well as the restrictions of the Reichstag, Bismarck succeeded in establishing the constitutional doctrine that the budget presented to the Reichstag was only an "economic plan" (Wirtschaftsplan) setting forth the estimates for the year, and while the Reichstag had still the theoretical right to accept or reject it, its rejection would involve a serious paralysis of government. Therefore, the Reichstag could not proceed to this extreme step. Thus, the central struggle for power was resolved in Germany in the very opposite way to that in which it was worked out in England.

It was only in the Constitution of the German Republic after the World War that the German Parliament recovered its control of the purse.

This opens up too large a field, however, for us to deal with fully here, that of the control of foreign affairs. Even in parliamentary countries, this is the branch of government which is least open to public scrutiny. The reasons for this are obvious, such as the need for quiet exploration of difficult subjects, so as not to arouse the prejudices of uninformed public opinion. But, while the actual conduct of negotiations is everywhere more or less handled by bureaucratic methods, the determination of policy tends in parliamentary countries to be less influenced by the military way of looking at things than in countries where popular government is more circumscribed. This has not always been true, for democracies can be belligerent; but where all the other interests of the nation have to be weighed by representative bodies, there is less likelihood of such decisions as Berchthold took in July 1914, when he led the war party in the Austrian Cabinet. The chief criticism of the English Foreign Minister, Sir Edward Grey, on that occasion was that the consciousness of parliamentary control kept him from being wholly frank about the situation in which Great Britain found itself. But this reaction to events already on the march, was a much less serious

responsibility than that assumed by one who, with the head of the army egging him on, led the government of Francis Joseph into war.

There is no doubt that times of crisis call for special organs of government of the bureaucratic kind.[1] It is in the normal conduct of affairs that we discover the real differences between responsible and non-responsible governments. They lie as much in the spirit and attitude of mind of statesmen and people, and in political tradition as in the forms of the constitutions used. Bismarck, for example, never got over his distaste for what he regarded as parliamentary interference in the affairs of the executive branch. Similarly in Austria, the Hapsburg tradition of the concentration of ultimate power in the Emperor was maintained with almost religious devotion by Francis Joseph, in spite of outward concessions to popular demands for parliaments. The result was that both the German Reichstag and the Austrian Reichsrat were in the false position of institutions which voiced public opinion, but were checked and limited when it came to decisions on major policies of State. The consequence of this anomalous position of parliament is best seen in the history of the Austrian Reichsrat. The sense of German discipline and loyalty kept the Reichstag functioning normally throughout its history, but the Reichsrat was the scene of intermittent rioting between the leaders of the different national groups as well as between Socialists and reactionaries.

In drawing the contrast between parliamentary and bureaucratic governments, we must of course remember that the parliamentary system—which includes the congressional—also depends upon public servants for its effective functioning. There are, upon the whole, approximately as many bureaus and departments of government and as many civil servants under parliamentary rule as there are in what we call the bureaucratic systems. The difference is one of responsibility and method of government rather than of the number of functionaries employed. This grows with the extent of government action, and not with regard to the distinction between responsible and autocratic power. For example, the increase in the scope of governments in recent years has greatly added to the civil service everywhere. It was in the latter part of the nineteenth century, and more especially in the twentieth, that the civil service became more and more necessary

[1] Professor Lindsay Rogers has analyzed this problem in a most suggestive and informative volume, *Crisis Governments* (New York, 1934).

with the growth of government action, and that, in the interests of efficiency, movements for civil-service reform became a pressing necessity. Most of the routine and permanent offices of administration ceased to be the spoil of political partisans and were open only to the successful candidates of civil-service examinations. This very important aspect of government should be kept in mind in judging the relative efficiency of the different systems. For the parliamentary system has been able to produce fully as adequate a civil service as has been created in bureaucratic countries. It has long been a byword in Great Britain that the British civil service, by correcting the mistakes of politicians and carrying out the purposes of the government effectively and well, has done as much if not more than any other single thing to make the parliamentary system succeed.

As we have seen above, the attempt to reconstruct the governments of the Continental countries by copying the English model was never more than a partial success in the countries east of the Rhine. Bureaucracy dominated within the States, and militarism remained the keynote of diplomacy between nations. But the parliaments themselves were largely to blame for their failures, owing to their not having developed good, practical procedures. The Industrial Revolution, while it exerted its force to widen the electorate, created so many groups of conflicting interests that Continental parliamentary history lacked the simplicity of the English bi-party system. When Parliaments are composed of half a dozen parties ranging all the way from the extreme Left to the extreme Right, there is bound to be confusion and inefficiency. They can and do remedy this partly by coalitions, partly by the work of commissions, but they are likely to be slow in reaching results. With all its shortcomings, however, the parliamentary system meant something to the common man throughout Europe; for it was the one part of the government in which the ideals of democracy could at least have a voice.

The role of political parties in government is, of course, not confined to the part they play in legislative assemblies or, for that matter, in any branch of government. When effectively organized the party system is the nation in politics, the vital principle, of which the formal organs of government are but the mouthpiece. This, by a strange paradox, is equally true of the new authoritarian States as it has been of those of the parliamentary tradition. The idea of a single party is primarily drawn from the teaching of Marxian Socialism which, while admitting the fact of

a bourgeois opposition to the proletariat during the period of transition, taught that ultimately the whole nation would share the single interest of the working class. This identification of the nation—or of all peoples—with the proletariat reminds one of the slogan of revolutionary France that "the Third Estate was the whole nation." It was not long before the Third Estate showed as many and fundamental cleavages within itself as had previously existed in the body politic of the Old Regime. Whether that will happen in the case of Communist Russia is a problem for the future. For the present at least the one-party system is working in governments that have no ideological kinship with Karl Marx. Next to Russia, the country that adopted it most thoroughly was China, where the government of Chiang Kai-shek fought Communism under the banners of the party of Sun Yat-Sen. But it was left for Fascist Italy and Nazi Germany to develop this system with far-reaching effect upon the ideas of government in Europe itself.

To discuss all of the implications of this new formation of "the nation in politics" would carry us too far afield. But the more one studies the working of the one-party system, the more one sees that it is not the nation in politics at all, for political vitality depends upon the freedom of the citizen to reach his own conclusions on the issues before him. As policies of State cannot but affect different people differently, many of them must under the one-party system either cease to express these differences or cease to take any real interest in the processes themselves. In short, a one-party system is by the nature of the case a system of acquiescence in despotism. This is best seen in the various "purgings" which took place in Soviet Russia in recent years. Those who found themselves in opposition to Stalin had no recognized way to make that opposition effective. There was nothing in Moscow like "His Majesty's Loyal Opposition" in the English Parliament, the leader of which receives a salary from the government which he opposes. Instead of this apparently illogical but really most useful method of party government the opposition in authoritarian States must resort to conspiracy.

We are driven, therefore, to the conclusion that the only forms of party government which are genuine are the bi-party system developed in Great Britain and the United States, and the multi-party system developed in the parliamentary states of Continental Europe. Both depend for their efficiency upon the political maturity of the citizens, the fundamental basis of all self-government.

12. THE CHALLENGE OF DICTATORSHIP

The rest of the story is told in the pages which follow. It is in large part the story of revolutionary movements, reaching farther down into the very foundations of society than any other in European history. The denial of the legitimacy of the things mankind has driven to attain throughout the centuries, personal liberty, security under the law, national and international morality, is now outspoken and unrestrained. The way in which these things have come about is described in detail. Alongside this story stands the description of the structure and functioning of the countries which still cherish institutions of self-government. It is to be hoped that the study of these experiences of other peoples may help to mature our judgment not only with reference to them but with reference to ourselves as well. For, in a time like this there is no safety for any nation that blindly follows its own path, ignorant of the experiences of other peoples. Even from this short sketch, however, it should be clear that the problem of government cannot be solved by any one formula, whether it comes from one's own history or that of others. This is bound to be more and more the case as the scope of government grows with the vastly increasing complexity of society and interdependence of nations. For, after all, the greatest challenge to existing institutions comes not from the improvisation of men in a hurry. It comes from that greatest of all world powers—modern science. Nothing like this ever happened before. At last we are witnessing the most fundamental of all revolutions, that which transfers the day's work from human hands to those of iron and steel, driven by the illimitable forces of nature. Human relationships within the State and within nations are bound to be different from what they were in the quiet, simple days of relatively static life. Science has made the world dynamic, not merely for the few years of its existence hitherto but for all time to come. Therefore, government must achieve both stability and a capacity for adjustment to ever-new situations in the pursuit of social, economic and political justice.

Among the first to see the epochal significance of applied science was Karl Marx, whose prodigious influence upon political as well as economic thinking should not be ignored in this survey. By temperament and training a philosopher, he turned Hegel's philosophy of history—to use his own figure of speech—

the other way round. Instead of viewing ideas as the dominant force in the evolution of civilization, his "economic theory of history" attempted to prove that the methods of economic production have determined not only the structure of society but the direction of thought as well. A resident of England in the mid-nineteenth century, he saw the Industrial Revolution as a world-wide process which was creating a new alignment in history, in which the struggle for control would be no longer between nations but between classes. The working class would unite to transform the State by destroying the institutions of capitalism in a world-wide system of Socialist governments. It is not part of this survey to estimate how much the Socialist movement was responsible for forcing along social and economic reforms in the various countries of Europe, but both in the World War and in the post-war years, Socialism yielded to the force of nationalism whenever the State was in danger. Moreover, in the two countries which have been the most outstanding in giving Socialism formal recognition—Germany and Russia—the trend towards nationalism seems all the more intense in proportion as the scope of government has been enlarged to cover almost all the activities of life. This has made for a more closely knit society, finding expression in only one political party, and a government which, contrary to Marx's idea that it would become responsive to changing opinion with the growth of intelligence, becomes more and more despotic in order to maintain its power.

This interplay of nationalism and Socialism is hard to trace. Even in a country like Soviet Russia, the claim that its government is based upon Marxian philosophy has been more and more challenged by the facts of Stalin's regime. In fascist Italy, the problem is turned the other way round; protesting nationalist opposition to Socialism, Mussolini has been an effective leader of the attack upon free capitalistic institutions. Still more is this the case in Nazi Germany. It is too soon, however, to measure the relative force of the different elements in these totalitarian states because they are revolutionary not only for the immediate period of transition from one form of government to another, but inherently so by their very nature. Recognizing that efficiency in a time like this calls for special measures and special forms of administration, they have turned to direct action as a method justified by the needs of the situation, in order to sweep from their path the obstacles presented by institutions dating from quieter times of the past. The resort to direct action implies irresponsible

control. Nothing is more difficult than to escape from this trend, as Napoleon III found out when he attempted to establish "the Liberal Empire." To keep the process going effectively, the State must be conceived of as one to which people surrender their individual judgments. The ultimate result, therefore, is that totalitarian states achieve their purpose by the acceptance of a principle of government which is the most ruinous in the history of politics; for the ultimate cost is the sacrifice of the greatest of all assets which a nation possesses—that of its intelligence.

Democracy, on the other hand, is an embodiment of intelligence itself; for, even when its standards are relatively low, its method of trial and error is directed by those who are free to consider all the consequences of the decisions which they make. Its only safety lies, however, in making that freedom work so that it is neither a reliance on ancient ways of doing things because they are the easiest, nor a careless surrender to the appeal of the demagogue. Fortunately, we have more ways now of reaching public opinion than has ever been the case in the past. And while this is by no means a guarantee that people will think right, they are less likely to continue to think wrong than if they were not challenged by press and radio as they are now. Moreover that challenge is more insistent than it used to be because time will not wait now as it once did for the consequences to be worked out.

This means that we must be free to experiment with the instruments of government as well as with its output. It is no use to accumulate a mass of unenforceable and confusing legislation on the statute books; we need to make surer that there is adequate provision for carrying out the intent and purpose of laws. This cannot be done by improving any one branch of government; the country will react more readily and more critically to legislation if the administration is adequate; and the result will almost inevitably be a greater caution in law making, because the law will be more of a reality. In all this process, the one guarantee of success remains that mysterious entity of Democracy called "public spirit," because the efficient State is that in which government and citizens effectively co-operate.

One final remark. It is a healthy sign that these problems are now receiving so much attention. Parliaments are becoming less miscellaneous and therefore less amateurish in their treatment of problems that are bound to grow more and more technical as society develops the intricacies of the economic life in the ma-

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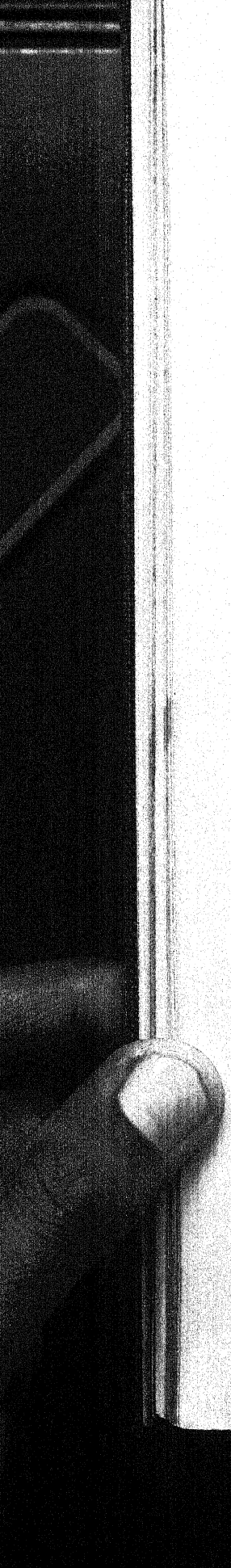
chine age. The Executive is becoming more and more dependent upon the advice of those who have had experience in the management of great affairs. The Judiciary keeps pace—although sometimes with laggard step—with the transformation of human relationships. The task of democracies, as the laboratories of government, will therefore be to keep forever at the conscious, cautious but fearless process of appraising, rejecting, or applying the proposals of those whose judgment is matured in the study of realities.

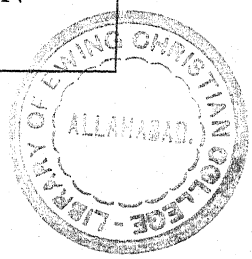
These conclusions are not mere speculations. They rise to the surface of all serious thinking on the art and science of government today.

THE GOVERNMENT AND POLITICS OF FRANCE

BY *R. K. Gooch*



PART I. THE FRENCH CONSTITUTION



CHAPTER I. OUTLINE SKETCH OF FRENCH CONSTITUTIONAL HISTORY

1. INTRODUCTORY

Nothing could be more natural to the American student of political science, when he arrives at the study of the government of a foreign country, than to raise questions concerning the constitution of that country. The Constitution of the United States is in a real sense the starting point and the central point in the study of American government. The student is aware of the fact that he must, if he would attain to any mastery in the subject, push his study beyond the confines of the Constitution; and yet the existence of a document like the Constitution, the importance of which appears to run no risk of being underestimated, gives a certain marked definiteness to his study. He may have learned that the conventional distinction between written and unwritten constitutions is of doubtful value; yet *constitution* inevitably means to him a document like the Constitution of the United States, and he thinks of America, with forty-eight other major constitutions, as a country of written constitutions.

France may be said to possess a written Constitution. It is likewise a country of written constitutions. The student of French government, especially the student of the central government, naturally begins with the instrument which, though presenting many points of dissimilarity with the Constitution of the United States, is currently known as the Constitution of France. Such a student is, moreover, presented with much other constitutional material for study. This, of course, takes the form not, as in the United States, of constitutions of smaller commonwealths, but of national documents of historical character.

2. THE GOVERNMENTAL SYSTEMS OF FRANCE

The Present System and Its Predecessors. The existence in France of numerous historical constitutional documents naturally and correctly suggests other governmental systems of a day that is past. In fact, the same suggestion is contained in the very name of the existing regime. The present Constitution of France is the Constitution of the Third Republic, a fact which clearly implies the existence not only of two other republics but of other than republican systems. In reality, France has, in addition to being a republic on three different occasions, been an absolute monarchy, a constitutional monarchy, and twice an empire. The student of the principles of government knows that such names in themselves denote little that is necessarily fundamental; but he is likewise aware that, in specific cases, history associates important connotations with terms of this kind. This is true in eminent degree of France. Some study of the successive governmental systems that have prevailed in that country forms an indispensable background for study of the political system of the present day.

Ancient and Modern Periods. The division of history into periods is, it is clear, always arbitrary, being at best merely a matter of convenience. At the same time, a marked tendency exists in France to regard history as falling into two almost wholly unrelated periods separated from each other by the French Revolution. The French Revolution, it must be confessed, was an event of such great moment that there is doubtless more justification than in any other case for a tendency to exist to think of the *ancien régime* and the modern period as being two air-tight compartments. Thus, for example, all the many written constitutions that France has possessed belong to the period that began with the Revolution. On the other hand, even this division of French history involves no inconsiderable degree of the arbitrary. Here, as elsewhere, much from the earlier period was carried over into the later.

Ancien Régime

The Ancient Constitution. Louis XVI's able minister, Turgot, insisted that France of the *ancien régime* possessed no constitution. This is reminiscent of the observation made towards the

middle of the nineteenth century by De Tocqueville that in modern England no constitution exists. Both remarks, of course, had in view a specially framed fundamental document. On the other hand, both, in so far as the sum of principles determining the structure and function of a governmental system may properly be regarded as a constitution, are equally untrue. In that broad but legitimate sense, France of the *ancien régime* undoubtedly possessed a constitution; and this constitution, according to the great Burke, was even one of much virtue. Nevertheless, the conditions that prevailed in France towards the end of the eighteenth century were, it is now easy to see, such as to render fundamental change inevitable. In order for what have come to be called modern conditions to exist, a revolution of some kind was necessary.

Absolute Monarchy. The principal causes of the French Revolution have often been recounted. In so far as they were political in character, they were inextricably connected with the phenomenon of *absolutism.* From the constitutional point of view, it is a simple fact that the scheme of government which prevailed under the *ancien régime* was in principle *absolute monarchy.* In general, all concepts that are at present conventionally associated with an abstraction, the State, were associated, in so far as they existed, with a person, the King. This situation, it need scarcely be said, was the result of development extending over centuries.

Establishment of a Consolidated Kingdom. In the earlier centuries of the Middle Ages, the unity of governmental authority in France was broken by the prevalence of feudalism. The King was merely a "first among equals." The "equals" were, of course, the great barons, who held large territories in theory as vassals of the King. They were, in reality, in most respects independent of the royal authority. The Dukes of Normandy are familiar examples. The Church, likewise, possessed much power and often exercised it at the expense of the King. Finally, towns and cities claimed and established a corporate existence; and, as *Communes,* they enjoyed a large measure of independence. Royal authority was confined for the most part to a central nucleus of the country, the King's domain. In order for the royal absolutism that characterized the *ancien régime* to prevail, a first requisite was acquisition by the King of a measure of control over the barons. The work was, in fact, accomplished by certain outstanding kings in the course of the twelfth and, more especially, the

thirteenth centuries.[1] The great baronial fiefs were annexed to the royal domain. The same kings combated the privileges of the Church and of the Communes. In the second place, in order for increased royal authority to be consolidated and maintained against the nobles, the governmental institutions of strong power had to be developed. This work is associated primarily with the names of great royal ministers. Though as early as the thirteenth century financial and administrative advances were brought about as increasing territory became subject to the real power of the King of France, royal government assumed its characteristic form in the seventeenth and eighteenth centuries. More especially, the three renowned seventeenth century ministers, Richelieu, Mazarin, and Colbert, developed to a high degree concentration of authority in the hands of central government. They curbed or abolished agents or agencies, central or local, that might pretend to check royal absolutism. In the second respect, they made particularly effective use of *intendants,* central officials located in the provinces. The *intendants* were instituted in 1635 by Richelieu. Within a short time, they succeeded in exercising, especially in the sphere of justice, police, and finance, such extensive power as to reduce to practical impotence the former provincial *governors,* who had, by virtue of being important army men, been abusing their authority. Thus, centralization, according to De Tocqueville, was "a product of the *ancien régime*" and, moreover, "the only portion of the political constitution of the *ancien régime* that survived the Revolution." [2]

Absolutist Theories. The kings of France, in establishing absolute authority, did not confine themselves to the use of military force and the employment of able ministers. They likewise relied on principles. In creating absolute monarchy in fact, they asserted a theory of absolute monarchy. This theory was in part founded on ideas of Roman imperial authority and in part on what were conceived to be the principles of Frankish Monarchy. The kings insisted that their rule had been established by divine will. As a consequence, they owed account to no one except God. This in turn freed them from responsibility to their subjects. Only the King had political rights; and, these being beyond the reach of men, any opposition to royal authority was revolutionary and sacrilegious.

[1] Especially important in this respect were Philip II (1180-1223), Louis IX (1226-1270), and Philip IV (1285-1314).

[2] Cf. De Tocqueville, *L'Ancien régime* (Paris, 1856), Livre II, Ch. II.

Potential Limitations. The general fact that the King of the *ancien régime* was absolute both in theory and in practice ought not to obscure a consideration that is not without importance. In practice, embryonic forms of the three well known branches of modern government were developing. The very existence of specialized administrative services, with a highly numerous bureaucracy, of the beginnings of a judicial system, and of an embryo legislature, in the form of the States-General, constituted potential, and to a slight extent actual, "checks" on unlimited royal authority. Moreover, reference was at times made to an "Ancient Constitution of the Realm" and to what were called "Fundamental Laws," with some suggestion that the King was obligated to adhere to them. Nevertheless, such limitations were of very restricted efficacy. No genuine development occurred of the idea of contractual relationship; and there was a notable absence of great charters comparable to those that distinguish English constitutional history. The States-General were abolished in 1614, not to meet again until 1789. In connection with the more active aspect of government, that is to say, what we should today call the executive, the work of the great ministers that has been seen to have marked the transition from feudalism laid the basis for a royal governmental practice which was not only absolute but, as the famous *lettres de cachet* [1] indicate, arbitrary. The greatest difficulty experienced by the King in gathering into his hands complete control of all government was that which was encountered in connection with the judiciary. In the contest between kings and feudal barons, one of the principal royal aims and one of the most important royal accomplishments was the gradual substitution of royal justice for baronial justice. This was the work of royal jurists and other agents of the King. However, when royal justice had for the most part triumphed over feudal justice, the prestige of the former was so great that the King found it no easy matter to make himself master of those who administered justice in his name. This situation is illustrated especially by the position of the thirteenth century Parlement of Paris, a body not legislative in character like the assembly of the same name that developed in England but a national supreme court. In the course of several centuries, with the disappearance of other agencies, such as that of the States-General in 1614, that

[1] These were royal letters sealed not with the official seals but with the King's secret or privy seal. Their contents represented a personal decision of the King, and usually contained announcement of a penalty restrictive of individual liberty, such, for example, as exile or imprisonment in a monastery or fortress.

were potential checks on royal authority, the Parlement, it is true, added to its judicial power a slight amount of legislative power which at times served as a limitation on the power of the King. This limitation was one that derived from the practice on the part of the Parlement of keeping the official register of laws and of registering in it royal decrees. The power to refuse to register a decree was in effect a veto power on legislation by the King. This position of the Parlement entered into French tradition; and this aspect of tradition has not been without influence in the later governmental history of the country. On the other hand, a minister like Richelieu was able to nullify the power of the Parlement; and, even much earlier, strong kings had found ways of circumventing it. Later, Louis XV actually abolished the Parlement for a time. However, under weak kings, the Parlement would re-establish its authority. Intrigues of the Parlement under Louis XVI were one of the immediate causes of the Revolution.

Social and Economic Maladjustment. In general, as a distinguished French historian has summarized the royal position at the end of the *ancien régime,* "nothing and no one in France had kept the right or the force to resist the King." [1] At the same time, this political unity that had resulted from the royal triumph over feudalism was matched by no corresponding social unity. The unity of the nation was yet to be established. In this respect, the most salient characteristic of France at the end of the *ancien régime* was the existence of "Orders," that is, of stratified social classes, each possessed of a different body of rights and privileges. More especially, in the fundamental matter of taxation, inequality was so great as to present formidable difficulties. In the circumstances, the conviction grew that reform of abuses was imperative. However, it was here that a regime of absolute monarchy was found wanting. No established channel existed through which public opinion could reach the King. Likewise, there was no recognized method of constitutional change. The resulting rigidity goes far to explain the tendency for public opinion, in grappling with reform of a system marked by absolutism, to push to the opposite extreme. The destruction of abuses brought in the end destruction of the regime itself.

Constitutional Monarchy

King and Nation. The meeting of the States-General in May of 1789, for the first time since 1614, insured the disappearance

[1] E. Lavisse, *Histoire de France illustrée* (Paris, 1911), t. IX, Ière partie, p. 401.

of royal absolutism. In its stead, there was established a regime of *constitutional monarchy,* destined to prevail for a few short years. Of the two basic elements that must find some kind of equilibrium for limited monarchy to exist, namely, the monarch and the representatives of the nation, the second rapidly gained the ascendancy. The States-General, within approximately a month following its first meeting, became the Constituent Assembly. The Third Estate had a few days previously declared itself a National Assembly; and with it the Clergy and Nobles gradually became merged. The Constituent Assembly, in the course of a little over two years, during which time the weakness, vacillation, and intrigues of the King and the direct and even violent action of the population, especially in Paris, complicated its task, not only governed the country, reorganizing the administrative structure of the country[1] and destroying the last traces of feudalism, but also formulated in August of 1789 the famous *Declaration of the Rights of Man and of the Citizen* and gave to France in September of 1791 a written Constitution.

The Declaration of the Rights of Man. The Declaration of Rights was a protest against the arbitrary power and the abuses of the *ancien régime.* Phrased in terms of prevailing eighteenth century concepts of natural law and the like, it was a manifestation of a strong faith that existed in the efficacy of the clear statement of "fundamental truths." In reality, by no means all of the provisions of the Declaration were concerned with specific individual rights in the usual sense of the word. Several important and striking provisions were concerned with *equality.* Indeed, the Declaration furnishes evidence that its framers were even more concerned with equality than with liberty. And, finally, several provisions clearly proclaimed new principles of public law. For example, sovereignty was declared to reside in the nation, and the separation of powers was asserted to be an imperative requirement.

Potential Parliamentary Government. In the Constitution that was erected on the basis of the Declaration of Rights, an attempt was made, with true French regard for logic, to apply the principles of national sovereignty and the separation of powers. This, in turn, insured that the King could not remain in a position of theoretical irresponsibility. A few members of the Con-

[1] The country was divided in 1790 into eighty-three Departments, the old Provinces, their names, and the privileges associated with them being abandoned. The Departments were divided each into several Districts, later called Arrondissements; and each Arrondissement contained a number of Communes. Cf. p. 204, *infra.*

stituent Assembly, notably Mirabeau, understood that the only way in which monarchy, for which there was at the time general respect and affection, could survive in the presence of development towards political democracy, was for the King to retain in theory his historical position, while a constitution should arrange matters so that responsibility of the King's ministers to the representatives of the people could develop. In other words, Mirabeau and a few others desired that what was becoming the English parliamentary system across the Channel should be established in France. It is an interesting speculation what French history would have been had such ideas prevailed; but the question belongs to the realm of the hypothetical. The English system was not widely understood in France; it was considered to be characterized principally by corruption, with the result that it was not generally admired; abstract concepts that prevailed were not favorable; recollection of abuses of arbitrary power was fresh; Mirabeau was distrusted; Louis XVI proved to be far from a strong character; and, in general, events were traveling exceedingly fast.

Failure of Limited Monarchy. Louis XVI's hesitation to accept the new regime, culminating in his unsuccessful attempt to flee the country, caused his position under the Constitution, when he finally appeared to give his adherence to it, to begin under far from favorable auspices. The Legislative Assembly, established by the Constitution of 1791, was a body of no great merit.[1] In less than a year, it felt constrained to summon a sovereign assembly, the Convention. It had a little earlier suspended Louis XVI from the kingship. The unfortunate monarch was imprisoned and subsequently put to death. Constitutional monarchy gave way to the Convention.

The First Republic

The Convention. The Convention governed France for three years. The period was one of fateful accomplishments, which history has come to regard as in part glorious and in part horrible.

Soon after the opening of the Convention, the extremist party, the Montagnards,[2] gained ascendancy over the more moderate

[1] The Constituent Assembly had, through a curious form of self-denial, made its own members ineligible for election to the Legislative Assembly. As a result, most men of political experience in the country were excluded.

[2] So-called because they occupied the high seats at the back of the chamber in which the Convention met.

Girondins.[1] The extremist leaders, who became associated with the Jacobin Club,[2] were characterized by a militant nationalism and by a ruthless determination to guide the Revolution at any cost in the direction which they arbitrarily decided to be in the interests of the people.

The execution of Louis XVI not only resulted in active hostilities against France on the part of European monarchs but was also followed by civil war, which was, in turn, exacerbated through destruction of the Girondins by the extremists and through subsequent revolt against the Convention on the part of a large number of Departments. The Convention met this formidable situation with the Reign of Terror. In the end, the country was saved. Brilliant victories were scored on the battlefield against the foreign enemy, and internal opposition was ruthlessly crushed. The public debt was placed on a basis of firm credit; a system of national education was founded; and other permanent public benefits were realized. The agency through which foreign and internal policies were directed was the famous Committee of Public Safety. This small body of nine members, meeting in secret, exercised dictatorial authority. Its guiding principle was the contradictory and impossible one phrased in Marat's words, "the despotism of liberty." Concerning the Committee's genuine patriotism, however, there could be no doubt. Nevertheless, success was followed by divisions among the Montagnards and by increasingly uncontrolled development of the Terror, culminating in the personal sway of Robespierre. Inevitably, strong reaction within a short time set in. Robespierre was executed; the Terror came to an end; and foreign enemies showed signs of becoming peaceful. The Convention proceeded to set up in 1795, to succeed itself, the system of the Directory.

The Directory. The period of the Directory witnessed the early exploits of Napoleon Bonaparte on foreign fields. The Directory itself, an executive council of five members, failed to distinguish itself. The situation inherited from the Convention was, it must be recognized, far from an easy one. Nevertheless, the members of the Directory were, with little exception, men of

[1] This group derived its appellation from the Department of the Gironde, named from the Gironde River, on which Bordeaux is situated. Several outstanding leaders of the group came from that Department.

[2] Political clubs flourished at this time. The Jacobins, originally the Breton Club, were so-called because they met in the former monastery of the Jacobin monks. Their official name was, first, *Amis de la constitution* and, later, *Amis de la liberté et de l'égalité*. The Girondins were members in the beginning, but later ceased to attend.

mediocre ability. By divisions among themselves they displayed the inherent weakness of a plural executive. Under them, France reached a point of being threatened again by anarchy within and, Bonaparte being in Egypt, by conquest from without. Napoleon felt himself called upon to take matters into his own hands. The four-year existence of the Directory came to an end in 1799.

The Consulate. The Directory was replaced by a Consulate, a system which derived its name from the fact that executive authority was vested in three Consuls. However, the First Consul possessed even in law a position superior to that of the other consuls; and, in practice, the First Consul, in the person of Napoleon, exercised transcendent power. France was, with astounding rapidity, restored from the unfortunate situation in which it had found itself. Far reaching achievements in domestic affairs alternated with brilliant military exploits. In the first category, an accomplishment of much lasting importance was establishment at this time of a highly integrated administrative system.[1] On the basis of the new territorial divisions of the country that had been made soon after the outbreak of the Revolution,[2] Napoleon established a series of co-ordinated local agents and agencies. In the result, local organization throughout the nation acquired characteristics which duplicated in large measure those of the system of central government that was being quickly and effectively developed. Other non-military achievements included financial reforms such as strengthening of the system of accountability and establishment of the Bank of France. Likewise, secondary and higher education was developed; French civil law was codified; [3] the Legion of Honor was founded; the Concordat with the Papacy was concluded; and agriculture, industry, and commerce were encouraged.

The First Empire

Napoleon I. The Consulate lasted until 1804. In that year, Napoleon, who had previously had himself made Consul for life, became Emperor.

[1] Cf. p. 213, *infra.*

[2] Cf. p. 53 n, *supra.*

[3] The famous Napoleonic Codes were five in number: the Civil Code (begun in 1800, though such work had been contemplated as early as the Constituent, and adopted in 1804); the Code of Civil Procedure (begun in 1802, adopted in 1807); the Criminal Code (begun in 1801, adopted in 1808); the Penal Code (begun in 1808 as a supplement to the Criminal Code, adopted in 1810); and the Commerce Code (begun in 1801, adopted in 1807).

Imperial Accomplishments. The period of the First Empire was in most respects merely the further development and the culmination of the period of the Consulate. Napoleon added to the number of his brilliant military achievements and pushed further his accomplishments in the fields of administration, jurisprudence, art, and education.

The Imperial Tradition. The French not unnaturally look back to the Empire with much pride. This fact affects, not least in the political sphere, their outlook and their pattern of thought in many and perhaps sometimes unsuspected ways. In respect of government, the *Bonapartist* tradition involves, in general, regard for and attraction by direct, effective, and authoritative action in time of crisis. The tradition not unnaturally relegates the democratic process to a minor, even though apparently basic position. More particularly, employment of the *plebiscite,* whereby acceptance or rejection of a regime or its accomplishments is in appearance left to free decision of the voters, is associated with Bonapartism. On the other hand, the same tradition is also influential in a negative sense and direction. The essentially democratic masses in France distrust a single individual possessed of overweening ambition; and though this aspect of the tradition involves more recent examples as well,[1] no small part of it is based on the experience that France has had with emperors.

The Restoration and the Monarchy of July

The Last French Kings. At the end of the Empire in 1815, France again of course became a monarchy. It so remained until 1848. However, history seems never quite to turn back upon itself; and so, whatever may have been the wishes or the theories of the first two kings, what is called the Restoration did not in reality re-establish the *ancien régime.* At the same time, the Bourbon family, in the person of Louis XVIII (until 1824) and in the person of Charles X (until 1830), regained the throne. Monarchy even survived the 1830 Revolution of July, the throne passing to Louis-Philippe of the younger, or Orleanist, line.

Monarchy and Parliamentary Government. Though the earlier part of the period from 1815 to 1848, especially the reign of Charles X (1824-1830), was typified by much that is associated with the Bourbon family and its concept of monarchy, a beginning was made in the development of a parliamentary system of government along English lines. In reality, power was gradu-

[1] Cf., e.g., p. 243, *infra.*

ally shifting towards Parliament. The accession of Louis-Philippe was striking evidence of this. At the same time, Louis-Philippe was the last French King. Under him, the essentials of parliamentary government were readily accepted; but party squabbles and shortsighted opposition to the extension of the suffrage marred operation of the system. Destiny seemed to will that parliamentary government could not survive in France unless accompanied by republicanism and political democracy.

The Second Republic

Louis-Napoleon as President. The period from 1848 to 1852 is the period of the Second Republic. Its beginning was marked by a Parisian republican revolution. The period saw the introduction—the definitive introduction, as it turned out to be—of universal manhood suffrage. It witnessed successively a provisional government, a short period of rule by a unicameral National Assembly, the election under a republican Constitution of Louis-Napoleon for a four-year term, and, at the end of three years of the term, a second election, through a plebiscite in conditions of authoritarian duress, of this nephew of Napoleon Bonaparte, this time for ten years.

The Second Empire

Napoleon III. Louis-Napoleon, after a year of his second term, became Emperor, with the title Napoleon III. The regime is known as the Second Empire. It was marked in its earlier years by a thorough-going absolutism; but later substantial concessions in the direction of parliamentary government were not made in time to prevent an end of the regime in 1870.

The Third Republic

Imperial Collapse. The Franco-Prussian War of 1870 brought the reign of Napoleon III to a close. A provisional republic was proclaimed. The republican regime, presumed to be only temporary, has, as the Third Republic, lasted to the present day.

The successive regimes in France may be seen in outline in the following table:

To 1789: *Ancien régime*
1789–1792: Constituent Assembly—Legislative Assembly (1791)
1792–1795: Convention

1795–1799: Directory
1799–1804: Consulate
1804–1815: First Empire
1815–1830: Restoration: Louis XVIII (to 1824)—Charles X
1830–1848: Monarchy of July: Louis-Philippe
1848–1852: Second Republic
1852–1870: Second Empire
1870– : Third Republic

3. THE CONSTITUTIONS OF FRANCE

The First Written Constitution

Documentary Proliferation. France has, since the Revolution, possessed written constitutions in a number that is, in a definite sense, countless. Students of the subject suggest various counts differing one from the other in greater or lesser degree. It is perhaps enough to phrase the matter by saying that France has had a considerable number of constitutions. This fact is illustrated by the story which has been many times told about a bookseller who, when asked on one occasion for a copy of the French Constitution, replied that he did not deal in periodical literature.

Constitutional Longevity. The student who has refreshed his memory through an historical outline of the governmental regimes that have prevailed in France will be aware that reference to a tendency towards rapid constitutional change in France applies primarily to the series of constitutions preceding the present Constitution. The Constitution of the Third Republic has existed for over half a century; and it today appears reasonably well established. The other constitutions had much shorter lives. The longest (that of 1852) lasted only eighteen and a half years. One (that of 1793) was voted but never applied; whereas another (that of 1791) had a life of less than a year. It is sufficient for the student of political science briefly to examine the more important of the provisions of the short-lived French constitutions.[1]

The Constitution of Limited Monarchy. The first French written Constitution was the monarchical *Constitution of 1791.*

[1] The most convenient collection of French constitutions is Duguit et Monnier, *Les Constitutions et les principales lois politiques de la France depuis 1789* (5e éd., Paris, 1932). In English, a convenient collection is F. M. Anderson, *The Constitutions and Other Select Documents Illustrative of the History of France* (2nd ed., Minneapolis, 1908).

This was a long document, containing as a preamble the famous Declaration of the Rights of Man. The form of government that was set up may, without too much violence to the facts, be compared with the traditional American system or with the British government before the establishment of the present cabinet system. The King was retained. However, he was in terms of the Constitution, no longer King of France, but King of the French. Likewise, interestingly enough, the stipulations dealing with the King were placed after those concerning the legislature. The law-making body took the form of a unicameral Legislative Assembly of 745 members, chosen for two years and distributed amongst the 83 Departments according to territory, population, and direct taxes. The suffrage was restricted to French males twenty-five years of age who were not servants, and who were qualified by domicile or military service and by the payment of certain taxes. The method of election was indirect, the electors, who were required to be persons with a considerable property qualification, numbering one out of every hundred voters. To the Legislative Assembly the King was granted entrance, but he was possessed of no initiative. He likewise had no power of dissolution. The Ministers were responsible to him, but they could be impeached before a High Court. The ordinary judiciary consisted of judges elected at intervals by the voters. There were justices of the peace, district courts, and a supreme court.

Constitutions of the First Republic

The Constitution of 1793. The Convention, having succeeded the Legislative Assembly, abolished the Monarchy. In the early months of 1793, a Constitution known as the Girondin Constitution, which had been drawn up by a committee, was presented to the Convention; but this Constitution was not voted. In June, the Convention framed the Republican Constitution of 1793, known as the Montagnard Constitution, which, being referred by the Convention to the people, was ratified by a vote of 1,810,910 to 11,910. Though this Constitution was destined never to be applied, its general provisions are not without interest. Power was vested in a single assembly, which was to be elected annually by direct universal suffrage. This assembly was empowered to issue decrees and to pass laws, the latter being subject to a kind of optional referendum. The executive was to consist of a council of twenty-four, to be chosen, one-half annually, by a complicated indirect process. The voters were to choose electors,

who in turn were to nominate candidates from amongst whom the legislative body was to select the actual members of the executive council.

The Constitution of the Directory. The Montagnard Constitution, before it could be applied, was suspended by decree of the Convention. In turn, the Convention became an instrument of revolutionary government. Finally, in 1795, or the Year III, the Convention, a conservative reaction having set in, presented France with another Constitution. As a result, the Convention was succeeded by the Directory. The Constitution of the Directory, usually called the Constitution of the Year III, was the most elaborate of all French constitutions. It consisted of 377 articles. It is especially notable for having attempted to make a careful application of the principle of the separation of powers and for having introduced for the first time in France a bicameral legislature. In the second respect, the legislature was composed of a Council of Five Hundred and a Council of Elders, the second body containing 250 members. The age limit for the Council of Five Hundred was 30, that for the Council of Elders 40. The members of both houses were chosen one-third at a time each year. The method of election, which was the same for the two houses, was indirect; and the suffrage was limited in extent. Thus, in the second respect, the vote was given only to adult males, not of the servant class, who were subject to direct taxation, who had been resident for a year in France, who were able to read and write, and who were qualified to practice a trade. The voters chose electors, who were required to be 25 years of age and to be possessed of certain property qualifications; and these electors selected the members of the two houses. The Council of Five Hundred had the sole initiative of legislative measures, its proposals being submitted to the Council of Elders for complete acceptance or rejection. The Council of Elders alone possessed the power to propose amendments to the Constitution. This body likewise chose the executive, that is to say, the Directory of five members. The choice of the members of the Directory, for whom the age limit was 40, was made from a list of fifty, prepared by the Council of Five Hundred. One member of the Directory was chosen annually. The power possessed and the functions performed by this plural executive were those commonly regarded as being executive in character. Amongst other things, it chose ministers; but, in accordance with the prevailing interpretation of the doctrine of the separation of powers, neither

the ministers nor the members of the Directory were allowed entrance to the houses of the legislature.

The Constitution of the Year VIII The Constitution of the Year III was replaced in 1799 by the Constitution of the Consulate. This Constitution is the famous Constitution of the Year VIII. It was based on a plan framed by Sieyès, considerably modified in a monarchical direction by Napoleon Bonaparte. The Constitution was put into operation even before the result was announced of a referendum in which it was approved by a vote of 5,111,187 to 1,567. The document was considerably shorter than the constitutions that had preceded it. It consisted of 95 articles; and it is notable, among other reasons, in that it contained no declaration of rights. It was to endure for fourteen years. One of the most striking aspects of the Constitution of the Year VIII was its complex system of suffrage and election. The system was based on the maxim of Sieyès that confidence comes from below but power from above. The voters consisted of all males over 21 years of age, not in the servant class, who could read and write and who were qualified to practice a trade. These voters were grouped in the Arrondissements. They chose in each Arrondissement a tenth of their number to form a list known as that of the *Communal Notabilities.* From those persons finding a place on these lists various local officials were chosen by the national executive. Moreover, the persons on these lists chose in each Department a tenth of their number to form a list of *Department Notabilities.* The persons who formed the lists of Department Notabilities furnished from their number certain Department officials, appointed by the national executive, and, in addition, chose a tenth of themselves to form a *National List.* From this List, a Senate chose the important legislative, executive, and judicial agents of national government. The legislature was composed of several different bodies, there being, in addition to the Senate composed of eighty members [1] over forty years of age serving for life, a Legislative Body of three hundred, a Tribunate of one hundred, and a Council of State. Legislative measures were prepared by the executive and submitted to the Council of State, where discussion of their provisions took place

[1] According to the Constitution of the Year VIII, the Senate was to consist originally of sixty members. The members were to choose two members each year for ten years. The Senate also filled vacancies in its own membership. A member was to be chosen from three candidates nominated respectively by the Legislative Body, the Tribunate, and the First Consul. A majority of the original sixty members was selected by four individuals mentioned in the Constitution (Ducos, Sieyès, Cambacérès, and Lebrun); and the remainder were co-opted.

and where amendments might be adopted. The same measures were also submitted to the Tribunate, which could debate them but could not amend them. The next step consisted of the choice by each of these bodies of three of its members for the purpose of debating the proposals before the Legislative Body. This assembly could take no part in the debate, its function being confined to accepting or rejecting measures as a whole. The Senate, besides its important electoral functions, was guardian of the Constitution, in which capacity it was empowered to annul unconstitutional measures, a power that was construed to recognize the Senate as possessed of constituent authority. This situation was in practice of considerably less moment than might have been expected, owing to the great and increasing power of Napoleon. His position, of course, gave to the system of the Year VIII its distinctive character. The First Consul possessed the real authority; the other two Consuls, though chosen like him for ten years, had only the power to be consulted. Finally, the members of the judiciary ceased to be elective; and from the Year VIII dates the modern system of courts.

The Imperial Constitutions

The First Empire and Premature Parliamentary Government. After the Constitution of the Year VIII, the next French constitution that requires the attention of the student of political science is the Constitution known as the Constitutional Charter of 1814. This Charter marked the re-establishment of hereditary monarchy. The Constitution of the Consulate, it is true, had been fundamentally altered in several respects by senate-consults; so that whether or not a new constitution can be said to have come into existence is largely a matter of terminology and of point of view. At all events, the usage was well established of making reference to the *Imperial Constitutions.* Thus, aside from reorganization in the Year X of the system of suffrage and election, an organic senate-consult in the same year revised the whole Constitution in view of a senate-consult which two days earlier made Napoleon Consul for life. Likewise, an organic senate-consult of the Year XII (1804) revised the Constitution so as to establish the First Empire. Moreover, the so-called Imperial Constitutions were materially altered by an Additional Act, which was accepted by Napoleon in 1815 upon his return from Elba. Thus, it belongs, in strict chronological order, after the Constitutional charter of 1814,—in fact, the Additional Act was in a sense an

adaptation to the imperial system of the liberal reforms of the Charter. However, after the Hundred Days, the Constitutional Charter was left as the recognized Constitution of France; and it so remained until 1830.

Monarchical Charters

The Constitutional Charter of 1814. The Constitutional Charter of 1814 marked the Restoration,—in a certain theoretical sense, the restoration of the *ancien régime*. This, of course, does not mean that feudal privileges and the like were restored; but, on the other hand, the personal sovereignty of the King was definitely recognized, both in the manner of the granting of the Charter and in its own express words. This recognition of royal sovereignty is, in French theory, necessarily in all conditions inconsistent with national sovereignty. The King, whose divine right was asserted in the preamble of the Charter, was the personal chief of the executive power; and he possessed alone the initiative in law making. He, however, naturally delegated certain authority to other agents and organs. Foremost of these, of course, was the legislature, a bicameral assembly consisting of a Chamber of Peers, which could also sit as a High Court in the trial of ministers and of persons accused of an attempt on the life of the State, and of a Chamber of Deputies. The Deputies were required to be 40 years of age and to qualify through the payment of 1000 francs in direct taxes. They were directly elected under a system of suffrage so highly restricted as to reduce the number of voters for the whole of France to 100,000. The restriction of the suffrage was accomplished through confining the vote to those only who were 30 years of age and who paid direct taxes to the amount of 300 francs. On the decisions of the legislature the King possessed an absolute veto. Especially worthy of note is the fact that there appeared in this Constitution certain features that are usually associated with the parliamentary type of government. Thus, the Chamber of Deputies could be dissolved by the King and the ministers had entrance to the Chambers. On the other hand, ministerial responsibility was not as yet clearly defined.

The Constitutional Charter of 1830. The monarchy of the Restoration was succeeded by the Monarchy of July. Charles X was supplanted by Louis Philippe; and the Constitutional Charter of 1814 gave way to the Constitutional Charter of 1830. Under this second Charter, there was, in French eyes, no longer a nega-

tion of the principle of national sovereignty. The King, laying no claims to divine right, became King of the French instead of King of France. Furthermore, the Chambers gained the important power of initiative in legislation. Nevertheless, the framework of government remained largely the same as under the Charter of 1814. Some modifications of considerable importance, however, were realized. Thus, for example, the principle of the responsibility of ministers to the Chamber of Deputies was explicitly recognized. The result was that the parliamentary system became better established in French tradition. Moreover, the hereditary peerage was abolished; and the position of the Chamber of Deputies was liberalized. In this second respect, the property qualification for membership was reduced so as to render persons eligible who paid 500 francs in direct taxes; and the number of voters was more than doubled by changes in the suffrage requirements. The vote was granted to males being 25 years of age who paid direct taxes to the amount of 200 francs. This amount was reduced by another 100 francs for Members of the Institute of France and for certain retired officers. Moreover, agitation in favor of further extension of the suffrage manifested itself during the course of a decade. Unenlightened opposition in this respect was largely instrumental in bringing on the Revolution of 1848.

The Constitution of 1848

Presidential Government. In the Republican Constitution of 1848, legislative power was entrusted to a unicameral Legislative Assembly of 750 members directly elected for three years, and executive power was vested in a President of the Republic directly elected for four years. The age qualification for membership in the Legislative Assembly was 25 years, that for the President 30 years. The President of the Republic was, at the expiration of his term, not again eligible until after an interval of four years. Both Assembly and President, it should be stressed, were elected by voters for whom the only real qualification was that of being 21 years of age. Thus, as things turned out, definite establishment of universal manhood suffrage in France was effected at this time. Though, according to the Constitution of 1848, the ministers were asserted to be responsible to the Assembly, though the President was given no power of dissolution, and though legislative measures initiated by the President had first to be submitted to the Council of State, the characteristic feature of

this regime was, in reality, the paramount power of the President of the Republic. The President was as directly representative of the nation as was the legislature,—in fact, his constituency, being the whole people, was much larger than that of any individual member of the Assembly. In the result, the President overshadowed the Assembly. The fact that the choice of the people fell on Louis Napoleon accentuated the situation. This nephew of Napoleon Bonaparte was an ardent admirer of the Constitution of the Year VIII; and, after the *coup d'état* by which he acquired dictatorial power, it was essentially the system of the Consulate that he established with the Constitution of January 14, 1852.

The Constitution of 1852 and the Second Empire

Imperial Dictatorship. The Constitution of January, 1852, maintained in the beginning the republican system. It accomplished this through a simple provision stipulating for a President elected for ten years. However, a senate-consult in November re-established the Empire. The executive power, which had at first belonged to the President, was, of course, lodged by the senate-consult in the Emperor. Likewise, the responsibility of the ministers to the President, this relationship having been substituted by the 1852 Constitution for responsibility to the Assembly, was transferred to the Emperor. The Emperor was responsible only to the nation. The initiative in legislation belonged exclusively to him. The legislature was a simplified edition of the legislature of the Consulate.[1] The Council of State, composed of from forty to fifty members named by the Emperor, stood in an advisory capacity for purposes of formulating and discussing proposed legislation. Such proposals were voted by the Legislative Body. This assembly contained something more than 250 members who were elected for six years by direct universal suffrage. However, during the Second Empire, the theoretically democratic basis of government was in considerable measure stultified through a practice on the part of the executive of recommending *official candidates* to the voters. The Senate of about 150 membres was appointed by the Emperor. It was, as under the Consulate, the guardian of the Constitution. As such, it possessed the power of interpreting the Constitution and of annulling legislative acts that were unconstitutional. In agreement with the executive, the Senate could alter the Constitution.

[1] Cf. p. 62, *supra.*

The Constitution of the Liberal Empire. The consular system established in 1852 and continued under the Second Empire was at first strengthened by various senate-consults. However, during the last ten years of its existence, that is, from about 1860 to 1870, the authoritarian character of the Empire was, through a series of senate-consults, altered in the direction of what came to be called the Liberal Empire. This tendency culminated in the Constitution of May 21, 1870. According to the provisions of this Constitution, the Senate became purely a legislative second chamber; initiative in legislation was shared between the executive and the two chambers; the ministers, who could belong to the chambers, formed a council or cabinet, which, though presided over by the Emperor, was responsible to the legislative branch; and the Emperor was responsible to the nation. In short, the attempt was made to combine an imperial system and parliamentary government. The Constitution was submitted to the people and approved by them. This liberalizing of the Second Empire, however, turned out to have been effected too late. Within two months, the Franco-Prussian War broke out. Within another two, the Second Empire had disappeared. It was replaced by the Third Republic and the existing parliamentary system.

CHAPTER II. THE EVOLUTION OF FRENCH DEMOCRACY

1. INTRODUCTORY

Knowledge in outline of French political history and some acquaintance with the successive constitutions that have prevailed in France form an indispensable background for study of the existing constitutional system. As a matter of fact, this system was, at the time of its establishment, regarded as only one more change in the kaleidoscopic development of French political experience; and its Constitution was viewed, with a particularly marked degree of certainty, as destined to be shortlived. However, the event has completely belied such expectations. The existing regime and its Constitution have had a much longer life than any of the others; and though the Third Republic has not been free from vicissitudes, the very fact that it has weathered formidable storms, especially those of the World War of 1914 and of the post-War period, indicates that the outlook in France is no darker than that in other democratic countries.

The apparently impregnable position in which the Third Republic has become established suggests a careful glance backwards in an effort to discover some sort of explanation for the comparative success of the existing regime. Unless historical forces are to be regarded as wholly capricious, they must in France have been leading up to the present system. Through apparently chaotic events and conditions, advance towards an end, at the time unperceived, must have been in the course of being realized. Some explanation must exist both for the lack of stability in former regimes and for the fact that in some way since 1870 necessary forces have become so combined as to produce a desired and desirable equilibrium. The possibility ought to exist of detecting some orderliness in French constitutional development. Reasons must be discoverable for failure in all cases but one. Careful search ought to bring to light the elements of permanence in that one case.

2. REPUBLIC AND REVOLUTION

Before the Third Republic. The student of French constitutional history ought constantly to recall the attitude of the French towards democracy and republicanism. He ought always to bear in mind the pronounced tendency in France to identify the one with the other. One of the watchwords of the Revolution, it should be remembered, was *equality*.[1] This, in the circumstances, meant, of course, political equality. But a struggle for political equality is a struggle for political democracy; and, in France, the forces set in motion at the time of the Revolution ultimately brought political democracy to France. However, this could not happen suddenly. Time was required. Again, the party that undertook direction of the struggle for political equality and democracy, that is to say, the revolutionary party, was, from the nature of the case, anti-monarchical, in other words, a republican party. This Republican Party was on several occasions successful in seizing power. Such success, it should be recalled, was in large measure made possible by the extreme centralization of the French administrative system. To seize Paris was, at least temporarily, to secure possession of France. This is precisely what the Republican Party succeeded in accomplishing. However, the Republican Party was, on such occasions, in the minority. The country at large had not yet fully accepted political democracy into its regular habits of thought. Hence, though the Republican Party might establish itself at the center of the State, it could not, without the support of the country, remain in control. The party was, therefore, on successive occasions driven from power.[2] Thus, the revolutionary and Republican Party succeeded in gaining power in 1792. However, the party was unable so to maintain itself; and it was supplanted and decimated by Napoleon and the Bourbon Restoration. In a new generation, a small Republican Party, which considered itself to be in the revolutionary tradition, brought about in Paris the Revolution of 1830. The party was not at the time, nor in successive armed revolts during the next two or three years, able itself to secure power; but the fact remains that the Monarchy of July was a revolutionary mon-

[1] Cf. p. 53, *supra*.

[2] This interpretation is suggested by Ch. Seignobos, *Histoire politique de l'Europe contemporaine* (7e éd., 2 vol., Paris, 1924), t. I, pp. 278 *et seq*.

archy.[1] Again, the Republican Party brought about at Paris the Revolution of 1848. However, the party remained in power only for a very short time; and its subsequent efforts during the period were repulsed. Napoleon III, by means of deportations and expedients of a similar nature, thoroughly disorganized the party. In this way, monarchy of an extreme kind flourished.

Democracy and the Third Republic. On the occasion of earlier republican successes in France, democracy, it may be repeated, had not become accepted by majority opinion. The Republican Party, that is to say, was not in reality representative of the country. Nevertheless, democracy was making its way slowly but surely. By 1870, it had reached the point of being widely accepted in the country at large; so that the Republican Party, it can now be seen in retrospect, was destined soon to represent the greater part of France. The predominance of the party was to be postponed only for a short time.[2] After the party had, following precedent, brought about the Revolution of September 4, it was temporarily disorganized by the war. The monarchists were presently returned in a majority in the National Assembly of 1871.

In the same year, the Paris revolutionists were annihilated as a result of the defeat of the Commune. On the other hand, the Republican Party as such was no longer a minority party that followed the lead of Paris. Being by this time in a majority in the country, it repudiated Paris and took its stand on the side of legality. Though at the moment in a minority in the National Assembly, the party was able by compromise to establish a republican constitution and, under it, in a short time to establish itself firmly in power. "Generations of monarchists, who were disappearing little by little, were succeeded by republican generations. From 1876 on, the Republican Party was predominant in the cities. In 1876, it possessed definitive mastery of the regions of the East and the South. This assured to it a majority and power. No further motive pushed it towards revolution. It had only to maintain the Republic, which had become the legal regime, in order little by little to secure control of the West and the North, which were more conservative or more indifferent. Revolutions ceased when the Republican Party, the only one organized for revolution, had no more need of revolution." [3]

[1] Cf. p. 57, *supra.*
[2] Cf. pp. 232-235, *infra.*
[3] Ch. Seignobos, *loc. cit.*, p. 280.

3. PARLIAMENTARY GOVERNMENT AND EQUILIBRIUM

Order in Apparent Chaos

Extremist Principles and their Combination. If it is remembered that, in the average French view, there is a close association —and, for practical purposes, an identification—of democracy, republicanism, and parliamentarism, then it is not surprising that the existing regime is not only democratic and republican but is, in its system of government, parliamentary. Furthermore, the idea suggests itself that the definitive establishment of the parliamentary system was the inevitable culminating result of certain forces brought into play at the time of the French Revolution, just as the forces working for political equality ultimately resulted, in some apparently deterministic fashion, in political democracy and republicanism. Indeed, a look backwards will lead to the discovery that no more than in the case of democracy and the republican regime could the parliamentary system have been the immediate outcome of the Revolution.[1] Since parliamentarism is inextricably interconnected with democracy and republicanism, the development leading to its final establishment followed *pari passu* their development. Corresponding to the temporary revolutionary successes of republicanism there existed a form of government in which power was concentrated in a sovereign assembly. When reaction against revolutions that were supported only by minorities brought about the downfall of government by a sovereign assembly, the resulting reactionary form of government was that of executive dictatorship. But each of these two systems, government by sovereign assembly and government by executive dictatorship, contains an element which experience shows to be an important ingredient of good government; and, though experience likewise proves that neither of these elements can long continue to exist alone, they are together capable of reaching an equilibrium that may render a governmental system stable, if the system contains them in combination. This equilibrium is typical of the parliamentary regime. It is, in fact, necessary to the existence of this system in its true form. In France, this equilibrium was, in reality, temporarily realized in the first quarter of the nineteenth century, in the period following the Restoration.[2] However, the parliamentary

[1] Cf. p. 53, *supra.*
[2] Cf. p. 57, *supra.*

system that was established at this time was a monarchical system and was not democratic in its basis. Though nothing prevents such a combination in theory, apparently it cannot prevail in France. Accordingly, the definitive establishment of the parliamentary system had to await the definitive establishment of republicanism and democracy. This took place in the period following 1870.

Historical Consistency. The history of the various French regimes that have prevailed since the Revolution may, on the basis of the foregoing analysis, be regarded as falling into two cycles.[1] The first of these cycles extended from 1789 to 1848. The second has extended from 1848 to the present time. Furthermore, each of these cycles falls into three periods, characterized in the first place by government by a sovereign assembly, in the second by executive dictatorship, and in the third by parliamentary government. In the first cycle, the first period extended from 1789 to 1795; the second period from 1795 to 1815; and the third from 1815 to 1848. In the second cycle, the first period extended from 1848 to 1849; the second from 1849 to 1870; and the third from 1870 to the present day.

First Cycle: 1789-1848

Assembly Omnipotence: 1789-1795. When the States-General met in May of 1789 for the first time in a century and three quarters,[2] the three traditional orders of this body abolished of their own volition the separation between the estates, and formed themselves first into the National and then into the Constituent Assembly. The Legislative Assembly followed in 1791. This Assembly in turn was succeeded in 1792 by the Convention, the powers of which came to an end in 1795. Thus, during this period, governmental power was concentrated into the hands of an assembly. That the kingship did not disappear for a few years is only incidental. Furthermore, though reaction from this period took the form of executive dictatorship, it is important to bear in mind that government by a sovereign assembly may likewise be regarded as in a definite sense dictatorship. This was particularly true of the last two years of the period under consideration, when France was without a constitution and when the basis of the authority of the Convention was wholly revolutionary. French

[1] This account is suggested by Hauriou, *Précis de droit constitutionnel* (2e éd., Paris, 1929), pp. 293 *et seq.*

[2] Cf. p. 52, *supra.*

experience appears to indicate that in modern conditions neither kind of dictatorship can successfully survive, though each contains in it an element which, taken in combination with an analogous element of the other, may lead to a durable regime, whether that regime be denominated monarchy, republic, or some other. At the same time, inasmuch as revolutions in France have been the work of the Republican Party, radical or extreme protagonists of republicanism, as distinguished from what may roughly be called moderate republicans, retain even at the present day a tender regard for government by a sovereign assembly. The *régime conventionnel* is considered by these radical republicans to be the only true republican system.

Executive Dictatorship: 1795-1815. The Directory, though its composition, like that of the two Councils, was revolutionary, marked the beginning of reaction towards executive government; and its four-year lease on life marked a transition to executive dictatorship. This dictatorship took the successive forms of the Consulate, the Life Consulate, and the Empire. The dominant will was, of course, that of Napoleon Bonaparte. However, even this genius was unable to establish a definitive regime. Bonapartism, it is true, possesses even at the present day a strong latent appeal for the French nation; and a tendency towards strong, direct action, which in certain conditions appears to be attractive in all countries, manifests itself in flareups from time to time in France.[1] At the same time, no system that is not based on the genuine consent of the people can hope to be stable and definitive in that country. Napoleon's bids for popular support were sporadic; and they were of doubtful sincerity. As usually happens, the real will of the ruler was manifested institutionally. Thus, for example, suffrage was for practical purposes abolished. The nephew of the first Emperor was in this respect to be on sounder ground during the Second Empire.

Parliamentary Government: 1815-1848. The fall of the First Empire was followed by the establishment of a parliamentary system. The system marked a compromise between government by a sovereign assembly and government by executive dictatorship. Events, however, were to prove that the compromise did not represent a genuine equilibrium. Whether the regime might have been rendered stable and permanent is a question that might be the subject of interesting reflection; but it belongs to the realm of the hypothetical. "The compromise system set up in 1814 was,

[1] Cf. p. 57, *supra*.

with slight alterations in 1830, to last until 1848, a period of thirty-four years. It was in reality a period of relative peace and of national rehabilitation. If it did not last longer, this was no fault of parliamentary monarchy but that of men who did not believe it compatible with universal suffrage and democracy. Indeed . . . it was the obstinate persistence of doctrinaires in retaining a ridiculously restricted suffrage that caused the regime to fall . . ." [1]

Second Cycle: 1848 to Present

Historical Repetition. Failure of the compromise between the two extremes characterizing the first two periods of the first cycle necessitated the beginning of a second cycle. This second cycle consisted of the same three periods as the first. There was revolution; there was reaction; and there was a compromise that attempted to find equilibrium in the form of a mean between two extremes.

Assembly Omnipotence: 1848-1849. The first period of the second cycle was shortlived. At the same time, the Revolution of February, 1848, was in several respects a miniature edition of 1789. Similar ideas were expressed in similar language. The forces set in motion extended beyond the confines of France, more especially into Italy and Germany. In France itself, a provisional government established universal suffrage. On this basis, a National Constituent Assembly was elected. It convened in May of 1848. It was dissolved in May of 1849. Meantime, it consciously endeavored to follow the tradition of the *régime conventionnel.* However, it had little peaceable opportunity to prove its merits. Political revolution was immediately followed by a social revolutionary movement; and as a result, reaction set in much sooner than after the Revolution of 1789.

Executive Dictatorship: 1849-1870. Government by the National Assembly was succeeded in May of 1849 by a system of presidential government based on the Constitution of November 4, 1848. In a very short time, the President, in the person of Louis Napoleon, and the Chamber were in conflict; and this led straight to the *coup d'état* of December, 1851. Thereafter, Louis Napoleon ruled as President with dictatorial power until, with the establishment of the Second Empire in November of 1852, he acquired the title of Emperor. From March of 1852 his rule as President had rested on the Constitution of Janu-

[1] Hauriou, *loc. cit.*, p. 309.

ary 14, 1852, which in a definite sense reintroduced for a few months the Consulate.

Parliamentary Government: 1870 to Present. The third period of the second cycle began in 1870. On the other hand, beginning in 1859, a tendency had manifested itself for executive dictatorship to be somewhat softened. In the course of eleven years, that is, during the period known as that of the Liberal Empire, this tendency gathered such momentum as to give rise to the Constitution of the Liberal Empire, adopted in May of 1870.[1] That this year might have in any event marked the beginning of a period of equilibrium, that is to say, the beginning of parliamentary government, is altogether possible; but this again belongs to the realm of the hypothetical. In about three months, war broke out between France and Prussia; and the Second Empire fell. The immediate events leading to final establishment of the parliamentary system in France are events that are closely intertwined with catastrophic experiences of the French nation at the time of this war and of the fall of the Empire.

[1] Cf. p. 67, *supra.*

CHAPTER III. THE FRAMING OF THE CONSTITUTION OF THE THIRD REPUBLIC

1. INTRODUCTORY

The contemporary history of the establishment of the existing governmental regime in France fell within a period of five years. This period extended from 1870 to 1875. In 1875, the Constitution of the Third Republic was adopted by the National Assembly of 1871. At the end of 1875, this Assembly had been governing France for five years.

The National Assembly, which, in having given to France its present Constitution, is in some measure to be compared with the Philadelphia Convention of 1787 in America, differs from the body that framed the Constitution of the United States in the two important respects of having had an appreciably longer duration and of having served during its life-time as the principal governing body of a great nation. In other words, the history of the French National Assembly is not alone of interest to the student of political science in being an account—important as that is—of the conditions in which the Constitution of France was framed; the Assembly, in conducting the practical governmental affairs of France for five years, acquired invaluable experience and undertook important experimentation which played no small part in the ultimate success in France of the parliamentary system of government.

The period of five years between 1870 and 1875 completes an interesting case of historical parallels. The fall of the Second Empire, like the fall of the First Empire, was succeeded by the establishment of the parliamentary regime; and yet this important governmental system did not, in either case, immediately appear fully developed from the beginning. In both instances, a short transitional period of evolution was necessary. The years following 1870[1] correspond to the important years that followed upon the Restoration in 1815.

[1] Cf. pp. 83-95, *infra*.

2. THE FALL OF THE SECOND EMPIRE

Franco-Prussian War. War was declared between France and Prussia on July 15, 1870. There followed, in the course of a few weeks, a series of overwhelming defeats for France. On September 1, the French were defeated in an especially disastrous battle at Sedan. Terms of surrender were drawn up that night; and, on the next day, Napoleon III in person, along with more than 80,000 men, became a prisoner of the enemy.

Sedan. Sedan was in reality the end of Emperor and Empire. News of the disaster became known to the Empress on the evening of the surrender, but it remained for the moment secret. On Saturday, September 3, word from Sedan, in the form of private messages, began to arrive in Paris. The capital was moved as only Paris can be moved. It was successively stupefied and infuriated.

Empire without Emperor. An imperial system is in particularly marked degree dependent on the person of the Emperor. In France, the legal situation resulting from the capture of Napoleon III had not been foreseen. It proved highly unsatisfactory. According to a senate-consult of 1856, a regency was anticipated only for the case in which an Emperor should not be of full age. The Empress Eugénie, it is true, had for the duration of the war been vested with certain powers of regency; but the personal freedom of the Emperor had naturally been assumed. The capture of Napoleon III was a mortal blow. Though the prevailing situation gave rise to hair-splitting controversy concerning whether there existed a "fall" of the "dynasty" or a "vacancy of the throne," the difference was for practical purposes negligible.

Governmental Breakdown. Counsels were much divided. The Empress and the ministers leaned towards a regency. The majority in the Legislative Body desired that power to deal with the situation be vested in that assembly. The minority favored a provisional government. In these conditions, the Government and the Legislative Body were unable to come to definite terms. The Legislative Body arrived at no definite solution in the course of an afternoon and of an early morning sitting. As a result, a meeting was set for early afternoon of Sunday the 4th. At that time, the Legislative Body undertook to examine the several suggested solutions in the deliberate manner of deliberative assemblies; but events were moving too fast for such a procedure.

3. THE PROVISIONAL GOVERNMENT OF NATIONAL DEFENSE

Parisian Insurrection

At the Palais Bourbon. Meanwhile, revolutionary meetings had been held in Paris during the night of September 3-4. When day arrived, the Sunday crowds gradually made their way to the Bourbon Palace, meeting-place of the Legislative Body. After a short delay, the iron gates were without great difficulty forced open. Leaders of the Republican Party[1] endeavored in front of the Palace to calm the crowd; but their effort was unsuccessful. A similar lack of success attended later exhortations, when the crowd had pushed into the galleries and on to the floor of the Chamber. "As a representative of the French Revolution," said Gambetta, "I adjure you to await calmly the return of members to their seats." But such pleas were in vain. The presiding officer declared the sitting adjourned.

At the Hôtel de Ville. The Republicans remained for a short time in an impromptu meeting after adjournment of the Legislative Body. Gambetta closed a speech of a few words with this statement: "We declare that Louis Napoleon Bonaparte and his dynasty have ceased forever to rule over France." Jules Favre insisted that civil war must be avoided and that a provisional government ought to be set up. The establishment of such government was, in French revolutionary tradition, associated with the city of Paris. Consequently, the cry was raised, "To the City Hall!" Thither proceeded the Republican leaders and the crowd. Without resistance, they invaded the City Hall, unoccupied during the Sunday holiday.

Last Vestiges of Empire. The Empress, advised by the Prefect of Police to leave at once, fled. The Senate was ignored by the crowd. In the evening, the Luxembourg Palace, its meeting-place, was sealed up; and the *Official Journal* the next day announced, "The Senate is abolished." There was in truth what Thiers, former Minister of Louis Philippe, called a "vacancy of power."

[1] Towards the end of the Second Empire, open opposition, which had in earlier years been practically non-existent, became possible. There was formed an anti-imperial coalition made up of Republicans and of the two branches—Orleanist and Legitimist—of the Royalists. In 1869, the opposition polled more than three and a quarter million votes as against somewhat less than four and a half million votes for "official candidates." The Republican members of the Legislative Body numbered thirty.

The Republic Proclaimed

Moderation Prevails. In these circumstances, two extreme tendencies manifested themselves. Conservative views were held by the rump Legislative Body, and conservative proposals emanated from it. The throne was declared vacant; and a committee was established with a view to conferring with the members at the City Hall. An extreme revolutionary position was taken by Blanqui, Flourens, and others. These future leaders of the Commune of Paris[1] demanded establishment of the Commune at this time. Between the extremes, the Republican members of the Legislative Body, led by men like Gambetta, Favre, and Jules Simon, were able to assume the authority to regulate the situation. The Republic having been proclaimed, a Government of National Defense was set up, headed by General Trochu, Military Governor of Paris.

Invasion and the Question of a New Regime. Fundamentally, two problems faced the Government of National Defense. In the first place, as the name of this provisional government implies, it had, in determining its policy and action, to recognize the fact that the nation was at war and its territory invaded. In the second place, proclamation of the disestablishment of the former regime raised the question of what constitutional system was to be set up in its stead. The Government of National Defense was compelled to concern itself in some measure with both of these questions, and with both of them together; for the two questions were, of course, exceedingly closely intertwined. So far as constitutional history is concerned, the various and varied details of military and diplomatic activities during the rule of the Government of National Defense form merely the background of the events more immediately connected with the eventual establishment of a governmental system.

4. GOVERNMENT BY THE REPRESENTATIVES OF THE NATION

Election of the National Assembly

The First Decision. In the beginning, a certain amount of sentiment manifested itself as favorable to immediate national elections. However, on September 8, the Government of National Defense decided on a delay of several weeks; and it proclaimed

[1] Cf. p. 86, *infra*.

that a National Constituent[1] Assembly would be elected on Sunday, October 16. The decree that was issued likewise stipulated that the members of the Assembly should be chosen at large in the Departments, in accordance with the liberal suffrage provisions of the Law of March 14, 1849.

Postponement. If opinion in respect of elections was not unanimous in the beginning, it became less so as the days went by. Three circumstances had an important bearing on the situation. In the first place, the soil of France was at places in the hands of enemy armies; and Paris itself became subjected on September 18 to a state of siege. In the second place, with the Government of National Defense in Paris and a Delegation from it in the South,[2] counsels were divided; and unity of action became highly difficult. The traditional basic antithesis of Paris and "the Province" manifested itself in disagreements between the Government and the Delegation. In the third place, there was a persistent demand, especially from the extreme revolutionary Republicans, for municipal elections, more particularly in Paris. In the result, a succession of wavering decisions followed. Thus, on September 16, the Government of National Defense decided to advance the date of elections for the Assembly from October 16, as at first determined, to October 2, and to hold the municipal elections one week before this date. However, on September 23, in view of the practical difficulties implicit in the general situation, a decree was issued postponing all elections until such time as conditions should be favorable. A week later, on the other hand, the Delegation, feeling that it was in closer contact than the Government with public opinion and believing that a general demand for the Assembly existed, named October 16 for the elections. On October 2, the Government at Paris annulled the electoral decree of the Delegation.

Armistice and Consultation of the People. The elections for the National Assembly were finally set for February 8, 1871. This determination was made possible by an armistice, signed on January 28. The Prussian armies had continued victorious in many parts of the country, and Paris was at the end of its resistance. The terms of the armistice were arranged between Bismarck and Jules Favre at Versailles. According to these terms, the Government of National Defense undertook to arrange the "free elec-

[1] The use of this word assumed considerable importance in subsequent controversy. Cf. p. 82, *infra*.

[2] This was decided upon on September 8. In the first part of October, Gambetta left by balloon the besieged capital to join the Delegation at Tours.

tion" of an assembly that should determine "whether the war should be continued or on what conditions peace should be made." There followed a short conflict between the Government and the Delegation. The latter, inspired by Gambetta, desired war to the bitter end; and, with a view to assuring the election of members of the Assembly favorable to this policy, it declared ineligible those persons who had supported the former regime. After an intervention by Bismarck, who invoked the terms of the armistice which stipulated for a "free" election, the Government succeeded in overcoming the Delegation. Gambetta resigned and withdrew to Spain. The elections were held on the date that had been fixed; and the meeting of the National Assembly was set for February 12, 1871.

War and the Question of Constituent Authority. The National Assembly, at the time of its convening, was faced with the same two problems that had confronted the Government of National Defense at the time of the institution of that agency,—namely, the problem of war and the problem of a definitive regime. In reality, the interconnection of these problems raised at the time the question of the authority of the Assembly to settle them; and it is still a controversial academic question. It is a question to which there are naturally two sides, a theoretical and a practical. In the first respect, the Republican minority contended that the National Assembly had been elected on the sole issue of war and peace, and that, consequently, it was without authority to decide on the future regime for France. From a practical point of view, there can be little doubt but that the Republican contention was sound in its initial premise; for, though prevailing opinion in France was almost certainly Republican, majority opinion also favored peace; and, inasmuch as the Republicans favored war to the bitter end, no possibility existed except that a monarchist majority be returned to the Assembly. However, once the question of peace had been settled, the National Assembly, in respect of the problem of a definitive constitutional system, no longer reflected the desire of the majority of the nation; so that there is no wonder that the Republicans questioned the authority of the Assembly to adopt a constitution. At the same time, the conclusion of the Republicans by no means necessarily followed logically from their premise. The Assembly might be ill adapted for its purpose, in the sense of not mirroring popular opinion; but it might none the less possess the *authority* to act. In reality, the contention was made by many, and is at

the present time made by reputable French students, that the constituent authority of the National Assembly was "beyond doubt." The original proclamation and decree of the Government of National Defense on September 8 envisaged a National *Constituent* [1] Assembly, it is pointed out; and at no time, so runs the argument, was a change of plans regarded as anything but a postponement. Accordingly, the conclusion must be that the Assembly chosen on February 8 was the assembly originally contemplated. On the other hand, this logic may be regarded as likewise doubtfully sound. Such historical argument based on textual interpretation frequently fails to make allowance for fundamental change in conditions brought about by subsequent events. Thus, whereas the Republicans appear to have drawn an unsound conclusion from correct arguments, their opponents seem to have drawn a correct conclusion from unsound arguments. Whether the assembly originally called and the assembly eventually convened were the same assembly or different assemblies is almost wholly an academic question. Conditions that existed at the time that the National Assembly was elected were fundamentally different from those that prevailed when the Assembly was first contemplated. At the same time, any such assembly, being the sole representation of the nation, is possessed, according to generally accepted principles of public law, of *plenary* and, consequently, of *constituent* power. To what extent the circumstance that a body inaccurately represents public opinion may affect its moral authority is a question of fact. In reality, the National Assembly of 1871, the authority of which was vigorously contested and a majority of the members of which were Monarchists, ultimately succeeded in giving to France a permanent republican constitutional system.

Organization of the National Assembly

Political Opinions. The Assembly of Bordeaux, as the National Assembly of 1871 is frequently called, from the port on the Gironde in which it first met, convened on February 12. It was composed of some 650 members. The difference between this number and 768, the size determined upon when the elections were proclaimed, is to be explained by the fact that a certain number of members had been elected in more than one Department. Thus, for example, Thiers was chosen in twenty-six Departments, and Gambetta in nine. Of the members elected, the

[1] Cf. p. 80, *supra*.

political complexion, though affiliations had later to be more precisely defined, was in general not obscure. There were about thirty Bonapartists, or Imperialists, this small number indicating that Gambetta's insistence on excluding supporters of the former regime was largely unnecessary. The Republicans, ranging from revolutionaries through radicals to moderates, numbered approximately two hundred. This left in the neighborhood of four hundred Monarchists. Thus, the Monarchists formed a large majority of the Assembly; and, had they possessed homogeneity and cohesion, they might easily have made their will prevail. In reality, however, they were divided into two camps roughly equal, the one supporting the Legitimist branch of the royal family and the second the Orleanist. The clue to the final action of the Assembly is to be found largely in this division amongst the Monarchists.

End of the Provisional Government. On February 13, Jules Favre arrived from Paris bearing the resignation of the Government of National Defense. The authority that it had provisionally exercised now belonged to the Assembly.

A Strong Executive. The National Assembly was not long in organizing itself. The examination of the credentials of the members was little more than a formality. It was quickly dispatched. Amongst these members, all eyes turned by a sort of spontaneous and unanimous movement to Adolphe Thiers. Largely because of his recommendation, Jules Grévy, a moderate Republican, was chosen to preside over the Assembly. The Monarchists made no move to block this choice; but they elected from amongst their number all the vice-presidents and practically all of the other officers of the Assembly. In order to carry on the government of the country, the National Assembly felt the need for a strong executive. Thiers was chosen Chief of the Executive Power of the French Republic.

The Leadership of Thiers

Personal Qualities. Thiers was at this time seventy-three years old. In spite of this advanced age, however, his faculties appeared unimpaired. Physically, he was small of stature; and this, together with the eyeglasses that he wore, rendered his appearance so quaint as to be almost ludicrous. At the same time, his industriousness, which had long since secured to him a reputation as a tireless worker, continued to display itself, apparently undiminished. The same was true of his brilliant intellect,

which is commonly considered his dominant characteristic. At this period, it was apparently at its highest potentiality, having been nurtured by the rich experience of a full life. He had, at the age of 32, written his ten-volume *History of the French Revolution.* His *History of the Consulate and the Empire,* some twenty years later, went further to assure his fame as an historian. He had been called by Napoleon III "the national historian." His practical experience had likewise been of vast extent. He had been instrumental in overturning Charles X and in thereby bringing a dynasty to an end; and he had taken a decisive part in persuading Louis Philippe to undertake his responsibilities. Under Louis Philippe, he had held various ministerial positions, though, in the latter part of the reign, he had acted vigorously in opposition. He had played a conservative part under the Second Republic; and, in the later years of the Empire, he had been leader of the anti-imperial opposition.[1] As a man of affairs he was energetic and self-confident, his imperturbable self-assurance causing him often to appear exceedingly vain and irritable. He displayed marked brilliance both as a conversationalist and as an orator. In both capacities, the keenness of his thrusts caused him to be highly respected. He had been very active during the War, and was to display considerable skill in the peace negotiations. It has been said that he "interested more than he attracted"; but if he was not highly popular in the usual sense of the word, the people in general respected him, admired him, and imposed implicit confidence in him.

Chief of the Executive Power. The National Assembly, in naming Thiers Chief Executive, defined his general position in these terms: "He shall exercise his functions under the control of the Assembly and shall be assisted by ministers chosen by and presided over by him." Such a relationship between legislature and executive head of a state was at the time without precedent. An executive who continues a member of the legislature and who is responsible to it is clearly different from republican heads of state like the President of the United States, the position of whom is commonly regarded as being determined by deference to the doctrine of the separation of powers. On the other hand, the position of Thiers bore little resemblance to that of the formally irresponsible heads of states which practice parliamentary government. At the same time, students of political science will see in the relationship certain characteristics of the

[1] Cf. p. 78 n, *supra.*

parliamentary system and will remark a resemblance between Thiers and a parliamentary prime minister. Theoretically, indeed, an effective parliamentary regime might exist without a formal head of state, and in recent experience certain experiments of this nature have been attempted by governments that followed the War of 1914; but to the members of the National Assembly the parliamentary system meant the classic system developed during generations in England and practiced for a time in France between the Restoration and the advent of the Second Republic.[1] In the eyes of these members, therefore, no parliamentary regime had been set up; nor had the National Assembly intended to establish such a system. Thiers was not meant to be either head of the state or prime minister. In the second respect, his position, it must be admitted, was incomplete. He was, both theoretically and practically, without certain basic powers, such, for example, as those of convening and dissolving the legislature. Again, there was no agent or agency, except the Assembly itself, to whom he could in theory or practice recommend such actions. At the same time, a beginning had been made towards the establishment and development for a second time in France of a parliamentary type of government. Under this incomplete version of the parliamentary system, France was, without any change of political organization, governed for more than six months; and, during this time, certain genuinely momentous undertakings were successfully carried through to completion.

The Pact of Bordeaux. Most of the historical events of the spring and early summer of 1871 in France are only indirectly connected with establishment of the Constitution. These events are, therefore, only incidental details of constitutional history. In fact, at the behest of Thiers, a definite policy of neutrality concerning constitutional matters was accepted by the Assembly. Declarations by the Chief of the Executive Power in mid-February and early March that reorganization of the country should take precedence over questions of what constitutional regime should be established became known as the Pact of Bordeaux.

Adjournment to Versailles. Meanwhile, within a few days after Thiers was named Chief of the Executive Power, peace preliminaries with Germany were inaugurated. By the end of February, an agreement was arrived at; and, on March 1, the National Assembly ratified the terms of the agreement. Ten days

[1] Cf. p. 57, *supra.*

later, the Assembly adjourned, having decided to move its meeting-place to Versailles.

The Commune. In Versailles, the National Assembly convened on March 20. However, two days earlier there had broken out the revolution that is known as the Commune of Paris. Municipal elections a week later returned a large majority of revolutionaries; so that bitter conflict between the Commune and the Versailles government became inevitable. Though the revolutionary movement apparently possessed little strength, two months were required in order to bring the Commune to an end. The last battle was fought on May 27.

Peace with Germany. Meantime, the Treaty of Frankfort was signed with Germany on May 10. Moreover, during these weeks and a further period that may be regarded as extending to the end of the month of August, the work of reorganization went on apace. Momentous policies were formulated, and a considerable mass of urgent legislation was enacted. The student of political science should recall, in the realm of local government, two laws. The first is a law of April 16 that effected the temporary municipal organization of the country, and the second is the important law of August 11, which continues until the present day to regulate the basic organization of the Departments.[1]

Monarchist Hopes. On August 31, 1871, a law of considerable importance for the development of the ultimate national system of government was passed by the National Assembly. However, before the character of this law is examined, mention should be made of one or two events that occurred in the early part of July. When the Commune had been finally suppressed, the Royalists felt that their time had come. They had become restless in the face of continuation of a Republican regime, and they hoped definitely to establish a monarchical system. This, it seems reasonably clear, they could have done, constituting as they did a strong majority of the Assembly, if they could have agreed amongst themselves. They pinned their hopes to two anticipated eventualities, but in both of them they were sorely disappointed.

The Fusion. The Monarchists of the National Assembly placed great dependence on what came to be called the "fusion," that is to say, reconciliation between the Legitimist and Orleanist claims to the throne. Such an eventuality was made possible through the willingness of the Count of Paris, grandson of Louis

[1] Cf. p. 222, *infra.*

Philippe, to give way to the head of the elder or Bourbon branch of the family, the Count of Chambord, grandson of Charles X. As a preliminary, the National Assembly had, during the first week in June, voted the repeal of all exile laws; and several of the Orleanist princes, two of whom had been elected to the National Assembly, proceeded to Versailles and exchanged visits with Thiers. The Count of Chambord, in turn, entered the country *incognito* and remained at his ancestral estate. The Royalists of the Assembly came to an agreement with the Orleanist princes in approving the "fusion." The Count of Paris took the initiative; but a very cool note from the Count of Chambord indicated that all would not be smooth sailing. This impression was confirmed a few days later. The Count of Chambord, in spite of advice from leaders of the Legitimist party, who insisted that failure to accept the tri-color flag for France would close to him forever the doors of the country, issued a manifesto, published in the newspapers of July 6, in which he stubbornly declared that it would be an unthinkable sacrifice of his honor to abandon the white flag of Henri IV. This stunning blow to the hopes of the Royalists was naturally a cause of rejoicing for the Republicans. Thiers, who was felt more and more to be leaning towards the Republican cause, declared that the Count of Chambord ought to be called the French Washington, for having been the founder of the Republic.

Republican Electoral Victories. A few days before the startling declaration by the Bourbon claimant to the throne, special elections had been held in forty-six Departments, in order to fill 118 vacancies in the National Assembly. These vacancies had been caused by several resignations and, more especially, by plural elections in the original voting.[1] The Royalists, expecting to benefit through a reaction from the Commune, allowed their hopes at this time also to run high; but they were likewise greatly disappointed. The Republicans carried thirty-nine Departments and gained one hundred seats. The Royalists carried only seven Departments and secured a mere dozen seats.

The Rivet Law. The law of August 31, 1871, is known variously as the Rivet Law, the Rivet Constitution, or the First Provisional Constitutional Law. Its immediate aim was to fix more definitely the position of Thiers. One of the more important stipulations of the law substituted for Chief of the Executive Power the title President of the Republic. Another provi-

[1] Cf. p. 80, *supra.*

sion declared the ministers responsible to the Assembly; but the position of the President was rendered anomalous by the provision that he likewise was to continue responsible to the Assembly. Thus, the position of President was not yet that of the formal head of a parliamentary regime. In reality, since the President and the ministers were both responsible to the legislature, the position of Thiers continued to bear a general resemblance to that of a prime minister. At the same time, the relation between the President and the ministers was curiously regulated by a stipulation that all acts of the President should be countersigned by the ministers. The institution of countersignature, as is well known to students of political science, is a simple, practical, and concrete element of classic parliamentary government. On the Continent of Europe, an apparent tendency has existed for countersignature to be regarded as a means for securing the parliamentary relationship rather than as a manifestation of the existence of that relationship. At all events, this provision of the Rivet Law seems to have been without effect. Thiers remained a real executive. Even had his position been made that of an irresponsible head of the state, his personal qualities might have very possibly caused the real power to be continued in his hands; and he might have been able, certainly for a time, to find ministers who would countersign measures which represented his personal decisions. Experience shows merely that, *in the long run,* ministers will not affix their signatures to, and consequently accept responsibility for, matters in which the decision is not their own.

The Fall of Thiers

Thiers Declares for the Republic. From the remainder of the year 1871, from the year 1872, and from the early months of 1873, the student of French constitutional history has but to note briefly a few events. It was a period in which important efforts were being made, and successes realized, in respect of reorganization of the country. The most important results were accomplished in the sphere of financial and military and, to only a slightly lesser degree, of educational matters. More closely connected with constitutional development was the work of a Committee of Thirty, especially in the course of the year 1872. The tension between the extreme Royalists and Thiers became considerably more pronounced; and the Committee was concerned, for immediate political reasons, with the question of

ministerial responsibility as well as with the matter of establishing an ultimate governmental system. Meanwhile, during the Easter and the summer vacations of 1872, Gambetta toured the country, eloquently pleading the Republican cause. Moreover, special elections in the month of June resulted in further Republican successes. As a matter of fact, Thiers was embarrassed by the efforts of Gambetta, especially by his campaign in favor of the dissolution of the Assembly; for Thiers recognized the constituent authority of the Assembly. Yet Thiers became more and more closely connected with the Republican cause, and correspondingly more irritating to the Royalists. The latter had been again disappointed in an unsuccessful effort at "fusion"; and matters were in their eyes far from being improved when Thiers, on November 12, for the first time clearly declared for the Republic.

The Law of the Thirty. In view of the prevailing situation, the Law of March 13, 1873, which is also known as the Law of the Thirty and as the Second Provisional Constitutional Law, is to be regarded as important both in its immediate connection with the position of Thiers and in its general relationship with the institutional and constitutional development of the Third Republic. According to the terms of the Law, the President of the Republic could in the ordinary course of events take active part in the Assembly only in such deliberations as concerned foreign affairs. With respect to matters of internal politics, the several ministers accepted full responsibility, unless as a Council they should declare that a specific question was an integral part of the general policy of the Government. In the latter case, the President of the Republic, inasmuch as his position was at this time still similar to that of a prime minister, was regarded as responsible. Thus, the distinction between individual and collective responsibility was recognized. Again, in such cases as were specifically declared to involve general policy, the conditions on which the President of the Republic could take part in the deliberations of the Assembly were clearly defined. The President was to communicate by means of a message his intention of speaking before the Assembly. This message interrupted the discussion; and the President could be heard only on the following day. Furthermore, after a speech by the President, the remainder of the discussion was adjourned until the next day. Consequently, what was in reality an attempt to guard against the power of Thiers's eloquence was made to appear an enhancement of his

dignity; and his formal position was more clearly approximated to that of head of the state in a parliamentary regime. In reality, the several expedients affected very little the practical influence of Thiers.

Liberation of the Soil. A few days after the passage of the Law of the Thirty, the liberation of the soil of France took place; and, about a fortnight later, the Assembly adjourned for an Easter vacation of six weeks. The hostility between Thiers and the Assembly continued to develop. Among the several causes for conflict was the question of awarding the credit for freeing the soil of France. A coalition that had been formed against Thiers claimed this credit for the Assembly, whereas the supporters of the President desired his personal claim to be recognized. Again, Republican candidates, especially candidates from the radical wing of the Republicans, gained additional election successes; and Thiers, though he had proclaimed that the Republic would be conservative or not at all, was held accountable by the Royalists and other conservatives for these victories. The coalition was determined upon the fall of Thiers; and, even before the end of the vacation, it had agreed upon the Marshal MacMahon as his successor. Following the conclusion of the vacation, Thiers caused proposals to be introduced looking to the establishment of a conservative Republic; but, in less than a week, what was equivalent to a vote of no confidence in the Government was voted by the Assembly. Thiers resigned; and MacMahon was elected President of the Republic.

Monarchy vs. Republic

MacMahon President. The overthrow of Thiers and the election of MacMahon made manifest the determination of the coalition to establish a Monarchical system in France. However, as Thiers had insisted when he espoused the cause of a conservative Republic, there was only one throne and three to sit on it. Napoleon III, it is true, had died at the beginning of the year; his heir lacked several years of attaining his majority; and the Bonapartists became a part of the coalition. Nevertheless, during the summer vacation of the Assembly, a last effort at "fusion" just failed of success. Complicated intrigues and prolonged negotiations consumed weeks and months. The Count of Paris journeyed to Austria to exchange visits with the Count of Chambord in evidence of reconciliation between the two branches of the royal family. The supporters of the two men agreed on

certain conditions. Detailed arrangements for the restoration were made. And then the uncompromising attitude of the Count of Chambord with respect to the question of the flag again ruined everything. At the end, a touch of comic opera was added to the situation by the secret appearance of the Count of Chambord at Versailles. However, his hope of establishing himself through enthusiasm aroused by a dramatic public appearance was disappointed when MacMahon, though a Legitimist, declared that his sense of honor would not allow him to take part in secret proceedings.

The Septennate. The election of MacMahon had left unchanged the legal character of the position of President of the Republic. The practical aspect of the constitutional situation, however, was much altered by the event. MacMahon was a very different sort of man from Thiers. The temperament of the former did far more, without legal change, to render the President of the Republic a parliamentary chief of state than all the stipulations of law aimed at the latter had been able to accomplish. The Marshal MacMahon was little interested in and less fitted for politics; so that he was satisfied to act on the advice of ministers and to leave decisions to them. Consequently, after the failure of the fusion during the summer, no difficulty was involved in rendering MacMahon's position that of a chief of state in law as well as in fact. This was accomplished by a law of November 20 known as the Law of the Septennate. The President of the Republic was made independent of the Assembly, and hence politically irresponsible, by the simple expedient of a guaranty to him of a fixed term. This was, as the name of the law implies, the period of seven years. As a matter of fact, this period of seven years and the position that had been evolved for the President of the Republic were subsequently to be incorporated by the Assembly among the provisions of the Constitution of France.

The Committee of Thirty. The second of the two articles that constituted the Law of the Septennate stipulated that within three days a Committee of Thirty should be set up for the purpose of examining "constitutional laws." Steps were taken with a view to complying with this stipulation; but so much time was consumed by indecisive balloting that the Committee was not finally constituted until the first week in December. This, in reality, marked the beginning of the constituent activities of the National Assembly of 1871.

Apparent Deadlock. The Committee of Thirty began its work without enthusiasm, and it continued in the same manner throughout the year 1874. The Royalists wished provisionally to organize the Septennate of MacMahon in the hope that the restoration might eventually be possible. As a result, though destiny willed that a Republic was to be established, fulfillment was far from easy. The Royalists, making use of all the expedients that control of the government placed in their hands, prosecuted a vigorous campaign against the Republic. Their majority in the Assembly made this possible, in spite of the fact that every special election marked a new success for the Republicans.

The Casimir-Perier Resolution. "The difficulty was no longer to bring to a complete end the dictatorial period of the Assembly, to re-establish a normal separation of powers, nor even to organize a true parliamentary system. Nearly everyone was in agreement on the necessity of these solutions. . . . The difficulty was always to have the Republic accepted as a definitive regime." [1] Thus, on July 15, a resolution of Casimir-Perier suggested that the Assembly instruct the Committee of Thirty to take as the basic principle of its work the proposition that "the government of the French Republic shall be composed of two Chambers and of a President, chief of the executive power." Though some evidence could be observed on this occasion indicating that the Republican cause was later to triumph, the resolution was defeated by a majority of twenty-nine. The Assembly adjourned for four months.

Personal or Impersonal Republic. Meanwhile, the Committee of Thirty went its leisurely way. It concerned itself with studies of the Constitution of the United States, and it gave some attention to other foreign governmental systems. It examined a learned report on second chambers, and it gave time to several other less imposing proposals. The inertness and the indecision of the Committee rendered it famous in French parliamentary history. In reality, these qualities were in large measure a reflection of the confused political situation that prevailed in the Assembly during the largely uneventful transitional year of 1874. The three intriguing groups of Royalists were mutually jealous and distrustful of one another. They appeared further than ever from being capable of positive accomplishment, especially with respect to the all-important constitutional question. In both the Assembly and the Committee, much time was dissipated in subtle

[1] Hauriou, *op. cit.*, p. 330.

argumentation of various questions, the most famous of which was the issue of the *personal* versus the *impersonal* Republic. "The controversies . . . in spite of their slightly pronounced metaphysical appearance, corresponded to perfectly definite interests. The personal Septennate meant power guaranteed to MacMahon alone to the exclusion of every other. In this conception, the eventual disappearance of the Marshal would result in a clean slate in respect of the constitutional question, and would permit every hope to the Monarchists. The impersonal Septennate meant quite simply a seven-year Republic at the head of which the Marshal might have one or more successors." [1] This controversy, at the end of 1874, took the form of complex manoeuvres in the Committee of Thirty. The central question was that of priority in the matter of proposals which were to be made to the Assembly. The Committee assumed all along that a Parliament would be created consisting of a Senate and of an elective Chamber. The question was which should be established first. Priority for the Senate would mean primary attention for a body that would give strong support to MacMahon against a Chamber to which universal suffrage was certain to return a majority of Republicans.[2] Such members of the Committee as were favorable to the Republic preferred for the discussion to begin with a consideration of the general question of the organization of the public powers.

5. THE NATIONAL ASSEMBLY AND THE CONSTITUTIONAL LAWS OF 1875

The Laboulaye Proposal. In the first week of January, 1875, the Committee of Thirty brought before the National Assembly a proposal in favor of priority of discussion for establishment of the Senate. The proposal was defeated. As a consequence, the Government resigned; and some delay was occasioned by the formation of another ministry. Finally, at the end of January, the Assembly began a constitutional debate that was destined to achieve definite results. The Committee now presented proposals looking to the organization of the public powers. In the course of Assembly discussion, Laboulaye, academician and university professor, revived the substance of the Casimir-Perier resolution,

[1] Maurice Reclus, *L'Avènement de la 3eme République* (Paris, 1930), p. 233.
[2] Cf. p. 232, *infra*.

and suggested as an amendment to one of the articles of the Committee's measure the proposal that "the government of the Republic shall consist of two Chambers and a President." This unambiguous recognition of the Republic was defeated by a small majority. Interestingly enough, part of the reason for failure is to be found in the words and actions of the extreme Republicans, who continued to question the constituent authority of the National Assembly.

The Wallon Amendment. Another university professor, Wallon, armed with another amendment, came upon the scene. The amendment was couched in the following terms: "The President of the Republic shall be elected . . . by the Senate and the Chamber of Deputies meeting together in National Assembly; he shall be chosen for seven years; he shall be re-eligible." This indirect proclamation of the Republic as the definitive regime was ridiculed by the Monarchist side of the Assembly. The author of the proposal explained that it merely took things as they were and called them by their names. When the vote had been counted, the amendment was found to have been carried by a majority of one. This one vote established the Republic. Wallon became the Father of the Constitution.

The Republic Accepted. Defeat for the Monarchy was soon followed by its rout. The Monarchists struggled for only a few more days. After that, some of them, believing that the Republic was inevitable, voted for its establishment. They merely hoped and expected that the regime would be a temporary one; and they endeavored to secure the adoption of such institutions as would be consistent with Monarchy, if a King should later be substituted for the President. The Republicans, likewise, could by no means get all that they desired. Nevertheless, at this point, Gambetta showed himself an able statesman by securing from his followers, in order to make sure of the principle of republicanism, support for institutions that were not associated in the French tradition with a republican form of government.

The Laws of February 25 and February 24. In the result, two important Constitutional Laws were passed by the Assembly in the last week of February. A Law on the Organization of the Senate was passed on February 24, and a Law on the Organization of the Public Powers on February 25. In reality, the first of these laws was passed contingent on the passage of the second; so that they are frequently referred to in reverse order, that is to say, out of their strict chronological order.

The Law of July 16. The National Assembly now showed no inclination to bring its life to an end. However, after a change of Government, after a decision to choose another Committee of Thirty, and after consideration of several matters of practical politics, the Assembly voted finally on July 16 a third Constitutional Law, that On the Relationships between the Public Powers. This, together with the two laws passed in February, outlined a future governmental system for France. A supplementary law, concerned with the election of Senators, was voted a short time later. Thereupon, the Assembly adjourned for four months. At the end of November, a law on the election of the Chamber of Deputies was passed. A month later, the Assembly set March 8, 1876, as the day for the convening of the new Parliament; and it extended its own life until that date. It adjourned for the last time on the last day of December, 1875.

CHAPTER IV. THE CONSTITUTION OF 1875

1. INTRODUCTORY

The Constitution of France, consisting as it does of three laws passed by the National Assembly of 1871 in the form of ordinary statutes, is, on the whole, to be regarded rather as a mode of expression than as a concrete reality. Nevertheless, the expression has become well established; and there seems no good reason why the three-fold composition of the Constitution should prevent it from being regarded as establishing a plan of government that possesses organic unity. French systems of government in the past have rested on constitutions. Force of habit, if nothing else, explains and justifies the view that the existing regime rests on a constitution. The most superficial acquaintance with the thing to which in France the expression *constitution* at present refers is sufficient to render unnecessary a warning that the Constitution of the Third Republic has more points of difference from than of resemblance to other French constitutions.

A typical French constitution may be thought of as a carefully and elaborately drafted document. As such, it is based on a single fundamental principle, and is logical in arrangement and symmetrical in structure. No one of these qualities is likely to be envisaged naturally when the Constitution of the Third Republic is described. This Constitution is far from embodying provisions for a complete system of government. The structure of the document displays neither logic nor symmetry. Being full of compromises, it is based on no single or simple principle. Though it is a Constitution Republican in character, it is at a far remove from what the Republicans would have drafted, had they been free to follow their own wishes; and it is, of course, not what the Monarchists desired. However, each Party, though expecting as well as hoping that the Constitution would be soon replaced by a document more to its liking, contributed an important elementary principle,—the Monarchists that of unity in ruling power, the Republicans that of a popular, and hence diversified, basis

for authority. Each of the principles alone had been unsuccessfully employed before.[1] At this time, their combination resulted in success. In France, according to a well-worn aphorism, only the provisional endures.

2. THE CONSTITUTIONAL LAWS

A Triune Document. The designation of the Laws of February 25, February 24, and July 16, 1875, as the Constitution of France is, then, based on usage and general acceptation. At the same time, such acceptance is not merely a matter of verbalism. In reality, the title of the Law of July 16 alone contains the word "Constitutional." The other two Laws are in their titles called merely "Laws," not "Constitutional Laws." Nevertheless, the fact is now well established that these two Laws are constitutional in the same degree as the Law so designated; and, moreover, it is equally well established that other acts of the National Assembly which might be argued to be organic in a degree at least equal to that of the three Constitutional Laws form no integral part of the French Constitution. The simple practical standard of judgment in the matter is the test of amendment. The amending process [2] is defined in the Law of February 25; and, as has become authoritatively recognized, it extends only to that Law and those of February 24 and July 16. Other legal stipulations, no matter how definite their organic character and no matter whether they antedate or follow the Constitution, are subject to change by ordinary statute. The only possible exception involves the question whether the Revolutionary *Declaration of Rights* forms a part of the existing Constitution.[3] This is a controversial question; and the academic and unpractical character of the controversy is heightened by the fact that judicial review of legislation is not an established practice in France.[4]

A Short Document. The original body of the Constitution of the Third Republic may be regarded as consisting at present of 24 short articles. In respect of distribution the Law of February 25 now consists of 8 articles, the Law of February 24 of 2, and the Law of July 16 of 14.

[1] Cf. p. 71, *supra.*
[2] Cf. p. 100, *infra.*
[3] Some French authorities assert, on the basis of the principle that all unrepealed law antedating the Third Republic continues in force, that the Declaration of Rights automatically became a part of the Constitution of the Third Republic.
[4] Cf. p. 104, *infra.*

Law on the Organization of the Public Powers. The Law of February 25 contained originally 9 articles. Subsequently, by the process of amendment, the ninth article was repealed.[1] The remaining 8 articles establish in outline the elements of a central government based on the principle of the parliamentary system. A brief stipulation sets up a legislature consisting of a Senate and a Chamber of Deputies. In slightly more detail, the position of chief executive and formal head of the state [2] is bestowed on the President of the Republic. The questions of method of selection and term of office are determined by stipulations reproduced from the Law of the Septennate and the Wallon Amendment. Other provisions associate with the President the usual powers of the holders of similar positions such, for example, as the power of law enforcement, of command over the army and navy, of appointment, of pardon, of dissolution, and the like. Then, the legislature and the head of the state are bound together, in the traditional style of parliamentary governments, by a ministry which must countersign decisions of the President and which is made specifically responsible to the legislature. Finally, as has been noted, the process of amendment is defined.[3]

Law on the Organization of the Senate. The Law of February 24 in reality now consists of only 2 articles. Of the original 11 articles, the first 7 were later repealed by amendment; [4] and the last 2 were of only transitory effect. The 2 remaining articles endow the Senate with concurrent legislative authority, while recognizing priority of the Chamber of Deputies in respect of money measures,[5] and establish the Senate as a high court of justice for trying high officials or hearing cases involving attempts on the life of the State.[6]

Law on the Relations between the Public Powers. The 14 articles of the Constitutional Law of July 16 treat of various matters, most of which would be as consistent with a non-parliamentary as they are with a parliamentary system. Possible exception is to be found in the stipulation that communications from the President to the Chambers shall be read by Ministers [7] and in the stipulation that the Ministers shall have entrance to both Chambers and shall on request be heard there.[8] Other provisions deal with the meetings and duration, the adjournment and prorogation, the privileges and the immunities, and the official organi-

[1] Cf. p. 101, *infra.*
[2] Cf. pp. 106-115, *infra.*
[3] Cf. p. 100, *infra.*
[4] Cf. p. 102, *infra.*
[5] Cf. p. 160, *infra.*
[6] Cf. p. 242, *infra.*
[7] Cf. p. 113, *infra.*
[8] Cf. p. 124, *infra.*

zation of the Chambers.[1] Still others are concerned with the promulgation of laws, the negotiation and ratification of treaties, and the declaration of war.[2]

Supplementary Constitutional Elements. When three Constitutional Laws are spoken of as the Constitution of France, the conception of a constitution that is involved is the same as the conception according to which one well known document has come to be regularly referred to as the Constitution of the United States. It is the conception involved in De Tocqueville's observation that there is no constitution in England.[3] On the other hand, there is also a broader sense in which France, as well as other countries, possesses a Constitution. This is the sense in which the English Constitution does exist. In this sense, the Constitutional Laws are in France only one element of the Constitution. In fact, they are only one element of the legal part of the Constitution. That is to say, exclusive of the element of custom and tradition and convention, which play such an important role in England and which affect in important ways the governmental systems of all countries, the complete legal bases of the system of government in France are to be found in many other legal provisions than those of the Constitutional Laws. These other legal elements include, on the one hand, statutes enacted by the National Assembly of 1871, statutes emanating from the Parliament of the present system, and regulations of a lesser order based on these statutes, and, on the other hand, enactments and regulations which antedate the Third Republic. In all these is to be found legal provision for the many omissions of the present French Constitution. Here, to mention only the most striking examples, are to be found the legal bases for the whole judicial system and, as has already been noted, for the whole system of local government. At the same time, these omissions are easily explicable in terms of the supposed provisional character of the Republic. The real expectation of the Assembly, it may be repeated, was the establishment of a temporary parliamentary Republic. Such a system might easily be conceived in combination with an independent judiciary; and the whole could without difficulty be based on an existing organization of local administration. In fine, the Constitutional Laws are merely a starting point in the study of the system of government which they did succeed in establishing.

[1] Cf. p. 140, *infra.*
[2] Cf. p. 112, *infra.*
[3] Cf. p. 49, *supra.*

3. AMENDMENT OF THE CONSTITUTION

Evolution and Formal Change. The present governmental system of the Third Republic is, of course, far from being identical with the system as it was at the time of its establishment. Evolution has done a considerable work. At the same time, the system remains based on the Constitutional Laws of 1875. Nevertheless, just as the structure and function of government in France are determined in large part by other provisions than those contained in the Constitution, so the change that has been effected since 1875 is the result for the most part of other forces and events than formal amendment of the Constitution. The text of the Laws of 1875, it is true, has, as has already been implied, not remained unchanged. The employment of the amending process, seen in its proper perspective, is not without interest or importance.

Legal Sovereignty. When one comes to the contemplation of the process by which and the authority through which changes may be made in the constitution of a country, one is at grips, from the legal point of view, with the fundamental problem of the ultimate nature of state and government in that country. Legally speaking, the power to change a constitution is the power, always legally speaking, to do anything and everything. On this power there can be no legal limitation; for there is, from the nature of the case, no higher law in the provisions of which such limitations can be found, as they would have to be found, for them to be limitations legal in character.

The Process of Formal Amendment. The amending process in France is, as has been seen, defined by provisions contained in the Constitutional Law of February 25, 1875. The principal provisions of Article 8 are phrased as follows:

> The Chambers shall have power, through separate action taken in each by majority vote, either from private member initiative or upon request by the President of the Republic, to declare that there is need of amending the Constitutional Laws. After each of the Chambers shall have taken such resolution, they shall meet in National Assembly in order to proceed with amendment. Action involving complete or partial amendment of the Constitutional Laws must be taken by majority vote of the members constituting the National Assembly.

The National Assembly envisaged by these provisions is, though composed of the same persons as Parliament, technically a differ-

ent body. It is, incidentally, likewise technically a different body from the National Assembly constituted when the two Chambers meet together for the purpose of choosing the President of the Republic.[1] According to the terms of Article 11 of the Constitutional Law of July 16, 1875, the officers of the Senate serve as officers of the National Assembly; and an Act of Parliament of 1879 determines that the two Chambers meeting as the National Assembly shall convene in Versailles, where there is a room sufficiently large to accommodate the more than 900 members. In practice, the National Assembly makes its own rules of procedure.

Juristic Problems. Several questions have been raised concerning the procedure and the extent of the authority of the National Assembly. For example, it may be questioned whether the National Assembly can concern itself with other amendments than those contemplated in the resolution passed by the two Chambers with a view to meeting in National Assembly, whether it could proceed by a different majority from that stipulated, whether it could make an amendment proposed by it subject to ratification by referendum, and so on. In so far as these questions are controversial, they are academic in character, in the sense that they can receive authoritative answer only from experience.

The Amendments. In practice, the Constitutional Laws of 1875 have been amended on three occasions. In 1879, a provision of the Law of February 25 was repealed which stipulated that "the executive power and the two Chambers shall be located at Versailles." In 1884, several textual changes in the Constitutional Laws were effected: (1) for a provision of the Law of February 25 stipulating that in case of dissolution of the Chamber of Deputies "new elections shall be held within three months" was substituted a provision to the effect that in such case "new elections shall be held within two months and the Chamber convened within ten days after the end of the elections"; (2) a provision was added stipulating that "the Republican form of government cannot be the subject of a proposed amendment"; (3) another addition provided that "members of families that have ruled over France shall be ineligible to the Presidency of the Republic"; (4) seven articles of the Law of February 24 were declared no longer to be of "constitutional character"; and (5) a provision of the Law of July 16 was repealed which stipulated

[1] Cf. p. 108, *infra.*

that on the Sunday following the opening of a session of Parliament, "public prayers to God shall be offered in the churches and temples invoking His aid for the labors of the Assemblies." Finally, in 1926, at a time of severe financial crisis, "constitutional character" was bestowed on the sinking fund of the national debt, certain sources of revenue were ear-marked for this fund, and an obligation was established of keeping contributions to the sinking fund up to a certain minimum rate, by budgetary appropriation if necessary.

Deconstitutionalization. The American student of government will note, especially in comparison and contrast with experience in the United States, several points of interest in the brief French history of constitutional amendment in the Third Republic. A first consideration worthy of notice is the relatively great extent to which direct repeal of constitutional provisions has been effected. In the case of the United States, it seems fair to say that all the twenty-one amendments but the last, which directly repealed provisions, not of the original Constitution, but of an amendment, have had the primary purpose, though some indirect repeal has been involved, of adding to the Constitution. In France, there has been much more definite intention to subtract from the provisions of the Constitutional Laws. In the case of the repeal of the provision that required public prayers for Parliament, there was clearly no intention that further legal regulation of the matter would result. A legal obligation was merely destroyed. At the same time, with the Constitutional provision no longer existent, an Act of Parliament could presumably either reimpose the obligation or stipulate, on the contrary, that no prayers of the kind could be offered. This theoretical consideration is highly pertinent, from a practical point of view, in the case of the other provisions that have been repealed. Thus, repeal of the provision that established Versailles as the seat of government was immediately followed by an Act of Parliament that located the Chambers and Ministries in Paris. So also, the "deconstitutionalization" of seven articles concerning the Senate was followed by an Act that dealt with the same matters as the seven articles and that contained, in some instances, provisions couched in identical words. Thus, to take a simple example, the Constitutional Law of February 24 and the Act of Parliament of 1884 both begin with the words "the Senate shall be composed of 300 members." The important point is that, as long as the provision remained in the Constitution, the number of Senators

could not be changed without amendment of the Constitution; whereas, after the provision had by the amending process been relieved of its Constitutional character, Parliament possessed the power to determine by statute on any size for the Senate it pleased, including, as it actually did, the size the Senate already was. As a matter of fact, just after the World War, the size of the Senate was increased by Act of Parliament in order that the recovered districts of Alsace-Lorraine might have members in the Senate. To repeat, had the provisions of the Law of February 24 not been "deconstitutionalized," Constitutional amendment would on this occasion have been necessary in order to alter the size of the Senate. Here, the student of American government will, in employing comparison, insist on distinctions. If a provision of the Constitution of the United States should be repealed, the result would by no means necessarily be that Congress would possess power to legislate on the subject. The provision repealed might be precisely a provision that had granted power to Congress. This was, in reality, true of repeal of the Eighteenth Amendment. Since, in general, Congress can legislate only where power for the legislation can be found in the Constitution, repeal of a grant of power would be likely to result in inability for Congress to act with respect to the subject involved. On the other hand, Parliament in France is recognized to possess the power to legislate legitimately in any and every way, unless it directly violates a provision of the Constitutional Laws; and, inasmuch as these Laws are primarily concerned with the structure of government rather than with the distribution of power under it, the theoretical superiority of the Constitutional Laws to Acts of Parliament is not of great practical importance. Parliament, in the ordinary course of events, may do almost everything without the possibility, and hence without the risk, of unconstitutional action. This is the real explanation of the infrequency with which the Constitutional Laws have been amended. Amendment was purposely made easy because both Monarchists and Republicans hoped soon to use the procedure; but their interest in change was primarily an interest in structure. When the Republic had become well established, operation of the regime could proceed without encountering, from the nature of the case, any serious Constitutional limitations or obstacle. The assumption is sometimes made that amendment is in practice difficult because of the reluctance of the Senate to go into National Assembly, where its position, on the basis of size, is inferior.

However, the wide legislative power of Parliament is a more important consideration.

Absence of Judicial Review. So far as the positive formal changes are concerned that have been made in the text of the Constitutional Laws of 1875, it would seem that the principle involved could in every case have been given legal character by being enacted by Parliament, without being made part of the Constitution. Inclusion in the Constitutional Laws had as its object desire to attach greater dignity and higher moral force to the matters concerned. This was clearly recognized during discussion in the National Assembly on the two occasions, in 1884 and in 1926, when amendments of the kind were effected. Intimately connected with the whole matter is the fact that judicial review of Acts of Parliament does not prevail in France. Hence, for example, if Parliament should fail to appropriate the moneys necessary to keep the sinking fund up to the level specified in 1926, no legal consequences could follow. The force of the Constitutional Laws depends on less definite, but no less important and real, considerations of a moral character.

PART II. THE GOVERNMENT OF THE THIRD REPUBLIC

CHAPTER V. THE EXECUTIVE BRANCH OF GOVERNMENT

1. INTRODUCTORY

Study of the present-day governmental system of France involves, on the one hand, some consideration of various agents and organs that are possessed of public authority and, on the other, some attention to their activities. This division may be seen to correspond in a general way with the biological concepts of *structure* and *function*. In several respects, employment of this biological analogy is, if not pushed to the point of identity, convenient and suggestive.

The concept of structure is the basis for the employment of analysis in the study of government and for the logical procedure of classification, of division, and of subdivision. Thus, analysis of the French government of today involves employment of the concept of the three familiar *branches of government*. This ought not to occasion any surprise. After all, it was the eighteenth century French philosopher, Montesquieu, who first gave currency in modern times to the practice of viewing government as divided into executive, legislature, and judiciary. As a matter of fact, this view of the three-fold structure of government is, as will be seen later,[1] applied in France more easily and naturally to central government than to local government. At the same time, analysis profits from employment of the further classification of government as central and local. Finally, the concept of function aids in arriving at an understanding of the interrelationship of the various branches of government each with the others.

[1] Cf. p. 207, *infra*.

2. THE FORMAL EXECUTIVE: THE PRESIDENT OF THE REPUBLIC

The Office and Its Occupant

Institution and Agent. The simple but important distinction between an officer and the office he occupies is easily applicable in the case of the President of the French Republic. Just as there is a head of the State, so there is a headship of the State. The head of the State, that is to say, the President of the Republic, is naturally to be thought of as occupying an office which, in turn, through the familiar phenomenon of institutionalization, is currently denominated the Presidency of the Republic. This institution is, from the nature of the case, a fairly well developed organization. As such, it involves certain elements of a personal and material kind. In the first respect, the most important element is, of course, the President.

Term of Office. The President of the Republic is, as has been seen, chosen by the Chamber of Deputies and the Senate convened in National Assembly. According to the Constitutional Law of February 25, 1875, he "shall be chosen for seven years." In this respect, the Constitution merely incorporated into its provisions the solution of the Septennate,[1] which, in turn, is said to have reflected the feeling of President MacMahon that seven years represented a period he would be willing to serve. This term may come to a premature end, as may the Presidential term in the United States, through death, resignation, or removal. As in the United States, several Presidents in France have died in office. In contrast to American experience in the matter, several French Presidents have resigned. As in the United States again, no French President has been removed. He is, according to the Constitution, removable "only in case of high treason." In the event of premature end of a Presidential term in France, a new full term of seven years begins at the time. There are no "unexpired terms." The Presidency of the Republic has no Vice-President as an element of the institution.

Qualifications. The three Constitutional Laws of 1875 contained in their original provisions concerning the President of the Republic no word with respect to his qualifications. A provision of the Law of February 25, 1875 states simply that "he shall be

[1] Cf. p. 91, *supra.*

re-eligible." In practice, only one President had, until M. Lebrun succeeded himself in 1939,[1] been re-elected; and he, incidentally, had resigned during the first year of his second term. He was Jules Grévy, successor of MacMahon. He had, it may be noted, opposed in 1848 creation of the position of President of the Republic. At present, a fairly well defined tradition against a second Presidential term tends to become established. Several Presidents have at the time of their election declared in a message of thanks that they would not seek a second term. Analogy with the "two-term tradition" in the United States suggests itself at once. There would appear to be even less rational justification for the French tradition than for the American.

A constitutional amendment of 1884, when victory of the Republic over Monarchy appeared reasonably certain,[2] stipulated, doubtless with the example of Louis Napoleon in mind, that "members of families having ruled over France shall be ineligible to the Presidency of the Republic." Members of Parliament are eligible to the office, being indeed frequently chosen in practice; but the principle appears to be well established, though there is no positive constitutional provision in the matter, that a member of the Senate or Chamber of Deputies must resign upon election.

Method of Selection. The date at which the two Chambers meet together at Versailles for the purpose of electing a President of the Republic is regulated in considerable detail by constitutional provisions. In this respect, an initial distinction must be made between an election caused by the normal expiration of the Presidential term and an election made necessary through an unexpected vacancy in the office. The first of these situations is regulated by the terms of Article 3 of the Law of July 16, 1875, worded in part as follows: "At least one month before the legal termination of the powers of the President of the Republic, the Chambers shall be convened in National Assembly for the purpose of proceeding to the election of the new President." A further provision of the same Article anticipates the almost unimaginable eventuality that through neglect the necessary decree convening the National Assembly might not be issued. In such case, "the meeting shall take place spontaneously two weeks before the expiration of powers." In the second situation, that is, in case of an unexpected vacancy, the National Assembly is required to

[1] This is scarcely a real exception, in view of the critical conditions that prevailed.

[2] Cf. p. 236, *infra.*

convene "immediately" and "spontaneously" with a view to the election of a President. In practice, the President of the Senate convenes the National Assembly in such cases.

Election of the French President may, as a method, claim to be simple, quick, and economical. It does not involve periodic disturbance of the life of the country, as does a Presidential election in the United States. This doubtless was in considerable measure planned by the National Assembly of 1871. Various considerations were determining factors. Not the least important was recollection of the career of Louis Napoleon. On the whole, the system has served well the purposes of a parliamentary republic. It has furnished France with Presidents who have been acceptable heads of state, conceived to occupy a position of dignity above the turmoil of partisan strife. This accomplishment on the part of a method of election has in some cases been made more easily possible through the development of a simple informal method of preliminary nomination.

Before the Presidential election of 1913, there took place what is called a "preparatory plenary meeting." This was an unofficial gathering of any members of the Senate and the Chamber of Deputies who desired to discuss in advance the election of the President. Such a meeting makes it possible for candidacies to be declared and discussed openly, and for uncertain and wavering votes to be concentrated on a recognized candidate. The precedent of 1913 has been several times followed; but for the elections of 1931, 1932 and 1939, "preparatory plenary meetings" were not held.

Though a Constitutional provision requires "a majority of the votes" cast in National Assembly and, hence, indefinite balloting until one candidate receives a majority, no election has in practice required more than two ballots. This record is the more remarkable in that no discussion takes place in the National Assembly, which is merely an electoral college. The Assembly being, as has been seen,[1] technically different from the National Assembly that possesses power to amend the Constitution, the members file silently by an urn, dropping in an unsigned ballot in favor of some individual as President of the Republic. In this way, secrecy of voting is maintained. Conservative opinion appears to approve this situation, the argument being that independence is thereby maintained; but more liberal or radical opinion condemns secrecy in this respect, on the ground that

[1] P. 101, *supra*.

responsibility becomes uncertain and discipline weakened. Not infrequently a President is chosen on the first ballot. In 1932, M. Lebrun was, following the assassination of President Doumer, so elected through a kind of tacit agreement and, as has been indicated, without preliminary meeting. Manifestly, rapid agreement of a large number of voters on one man helps to give the President of the Republic the imposing position which he ought in principle to have.

Civil and Military Household. There exists an interesting symbol both of the position of the President of the Republic as head of the French State and of the fact that this position is in direct line of descent from that of kings. This symbol is to be found in one of the elements of the organized institution which the Presidency, it has been suggested, is. It is the Civil and Military Household of the Presidency of the Republic. This two-fold organization is to be compared with two royal institutions that existed both before the Revolution and, with modifications, after the Restoration. They were the King's Household and the Military Household of the King and Princes. On the other hand, the fact that the position of the President of the Republic is a position of greatly diminished political importance naturally affects the character of his Household. It is, from the nature of things, an establishment much less extensive than were the old royal organizations or than would undoubtedly be the President's Household itself, if the position of the President should become one of enhanced importance. For example, in the first respect, the King's Household under the *ancien régime* included the principal elements of organization that now form part of that national executive department which is today the most important of all from the point of view of internal politics,—namely, the Ministry of the Interior. At present, the President's Household consists, on the military side, of a general, an admiral, and various other officers of lesser rank and, on the civil side, of a general secretary and numerous assistants. The general secretary is head of the Household, symbolizing in this way the subordination of military to civil authority. The several members of the Household dispatch such business as devolves upon the President. They examine reports, study proposals, prepare documents, offer advice, and in other ways assist the head of the State.

Residences. The principal residence of the President of the French Republic is the Elysée Palace in Paris. He also has at his disposal several other residences. The best known of these is the

château at Rambouillet, famous for its Presidential rabbit-shooting parties.

Budget. The budget of the Presidency of the Republic, which is voted annually by Parliament as part of the national budget, is simple in its structure. The salary of the President is 1,800,000 francs (c. $500,000), on which he pays a tax of about 720,000 francs. The sum of 900,000 francs is allocated to the President for Household expenses, and an equal sum for traveling expenses.

Presidential Powers

The President as a Figurehead. The position of the President of the Republic in the French governmental system is, in general, the position of a constitutional monarch under parliamentary government. It is a position which readily lends itself to easy generalization, a favorite account, for example, denominating the holder of such position a "figure-head." However, any effort at accuracy requires numerous distinctions, modifications, reservations, and qualifications. Aside from differences from country to country, determined by national characteristics and the like, the nature of the position varies considerably with the personality and the character of the holder. In the result, generalization demands a substantial measure of caution.

Possession and Exercise of Power. Not unnaturally, a French account of the nature of the Presidency is very likely to put the matter in terms of *power.* Such an account begins with a basic distinction between the *possession* and the *exercise* of power. At the same time, the dictum that the President of France possesses power but does not exercise it refers only to a part, albeit the most important part, of such power as is associated with the Presidency. The power involved is what may be called political power. This, in turn, is to be distinguished from power associated with the *formal* aspect of the President's position. In general, the President may be said to possess but not to exercise political power, in the sense that, with respect to the substantial amount of power of this kind bestowed on him by law, he cannot, in practice, make personal decisions, in the usual meaning of that expression. Such decisions, according to a fundamental principle of parliamentary government, are made by responsible Ministers.

Formal Powers. The President of France both possesses and exercises formal executive power. This power measures, though

it is also in a sense determined by, the actual functions performed by the President as he goes his way from day to day. In this respect, his position is no sinecure. Indeed, he has little, if any private life, every hour of the day and many of the night being fixed for him in much detail. M. Doumergue, considered one of the most successful of the Presidents of France, is said to have declared that he did not desire a second term because he had been a prisoner of his office. In practice, there are documents to which the President must affix his signature; there are, as will be seen, meetings of Ministers at which he must be present; there are diplomatic officials to be received whom he must meet in person; there are countless social gatherings and other functions which he must attend; and so on. Furthermore, it would be a mistake to underestimate the importance of formalism and pageantry in connection with government. Perhaps, the simplest consideration is that they would not be continued if they were not regarded as being important, however intangible the reasons and results may be. The tradition of Republican simplicity doubtless prevents the position of the French President from being so ornate as a similar position under Monarchy; but the President's position is nevertheless impressive. Professor Joseph-Barthélemy neatly phrases the matter through adaptation of words of Sieyès. The President of the Republic is conceived to personify "a polished, elegant, and magnificent nation." [1]

Executive Powers Strictly Speaking. The dictum, in connection with political power, that the President of France possesses but does not exercise such power, suggests that examination of this power belongs not so much to a study of the President as to a study of those governmental agents who do exercise it, namely, the responsible Ministers. No small amount of unreality is contained in an elaborate account of the various powers of the French Presidency, when the account is qualified, as it must be, with the assertion that it is the Ministers who use them. It is enough to recall that the Constitution of France bestows on the President of the Republic the powers which have in the history and practice of governmental systems come to be regarded as properly executive in character,[2] the provisions of the Constitution, as applied in practice, ensuring that in general the decisions shall rest with responsible Ministers. Thus, the President is given

[1] Joseph-Barthélemy et Paul Duez, *Traité de droit constitutionnel* (2e éd., Paris, 1933), p. 617.

[2] Cf. p. 98, *supra*.

the several powers that are sometimes called "executive powers strictly speaking,"—namely, the generic power of law enforcement, the related power of commanding the armed force of the country, the basic power of appointment and removal, and the ancient power of conducting foreign relations. The simple constitutional provisions in this respect are phrased as follows:

> The President of the Republic shall promulgate laws when they have been voted by the two Chambers, and he shall supervise and ensure their execution.
>
> He shall have command of the armed forces.
>
> He shall appoint all civil and military officers.
>
> Envoys and ambassadors of foreign powers shall be accredited to him . . .
>
> The President of the Republic shall negotiate and ratify treaties.

The dictum that these powers are not exercised by the President does not mean, it may be stressed, that he is wholly without personal influence with respect to their exercise or that he does not regularly perform in person certain formal functions connected with them. The situation is merely that final decisions concerning matters of policy involved in the exercise of these powers belong to responsible Ministers. In respect of each of the powers mentioned, the Ministers as a body are involved to some extent, greater or lesser; but, in specific cases, an individual Minister is often more closely than the others associated with the political activities concerned. Thus, for example, the Minister of the Interior is of especial importance with respect to law enforcement, the Ministers of the Army, the Navy, and the Air Force with respect to command of the armed forces of the nation. The more important appointments concern primarily the Prime Minister, though his own appointment, as will be seen presently, is frequently said to offer at times to the President of the Republic real power of decision; but all the Ministers, especially again the Minister of the Interior, exercise no inconsiderable power in respect of appointment. The particular Minister associated with the conduct of foreign relations is, of course, the Minister of Foreign Affairs; and yet the President of the Republic is usually said to have more opportunity for personal accomplishment in this sphere than in any other.

Legislative Powers of the Presidency. The French Constitution, again, is generous in its definition of the so-called legislative powers of the executive that are bestowed on the President of the Republic. The principal provisions are these:

The President of the Republic shall, concurrently with members of the two Chambers, have the initiative of laws.

The President of the Republic shall have the power, with the advice and consent of the Senate, to dissolve the Chamber of Deputies . . .

The President of the Republic shall prorogue Parliament. He shall have power to call extraordinary sessions. He shall have the duty of so calling them if during the interval between sessions request is made by a majority of the members composing each Chamber. The President shall have power to adjourn the Chambers: Provided, that adjournment shall not exceed a period of one month nor take place more than twice in the same session.

The President of the Republic shall communicate with the Chambers by messages read from the tribune by a Minister.

The President of the Republic shall promulgate acts within the month following communication to the Government of the act formally adopted. He shall promulgate within three days acts the promulgation of which shall, by an express vote in both Chambers, have been declared urgent. Within the period stipulated for promulgation, the President of the Republic shall have the power, through a message giving his reasons, to request of the two Chambers a reconsideration. This may not be refused.

In general, the situation is the same with respect to these powers as with respect to the powers that are executive in the strict sense. The decision is that of responsible Ministers, circumstances determining whether the Ministers as a group are more immediately concerned or whether the individual Ministers, including the Prime Minister, are more particularly involved. Several of the powers, it may be noted, are in practice exercised infrequently or not at all. Thus, the power of dissolution, exercise of which is an integral aspect of the operation of parliamentary government in England, has in France been employed only once. That occasion was in 1877.[1] Since then, though suggestions of another employment of dissolution are at times heard, the power has remained in disuse. Again, the power of suspensive veto has so far not been once exercised. President Millerand is said to have stated privately that he would veto certain measures, if passed; but the fact seems to be reasonably clear that both employment of this power, which naturally would involve ministerial responsibility, and, hence, the very existence of the power are inconsistent with parliamentary government. Finally, though Presidential messages are at times read to the Chambers by a Minister, they are normally not important documents. Since the time of MacMahon, examples have apparently been confined to messages of thanks to the

[1] Cf. p. 234, *infra*.

Chambers for election and to messages of resignation. The Ministers must in any event assume responsibility; and their more important pronouncements are made in their own name, not in that of the President. The best example is a declaration of policy made by a new Cabinet, especially when its members have just assumed office. This corresponds in a general way to a speech from the throne under parliamentary monarchy; but French republicanism has eliminated this ceremony. So far as more important executive powers of a legislative character are concerned, conferment of them on the President of the Republic corresponds to the regular performance of certain activities by the Ministers. Thus, introduction of bills by Ministers is a familiar integral aspect of parliamentary government. The summoning and proroguing of Parliament are regularly determined by ministerial decision.[1] Finally, an exceedingly interesting and important power possessed by the President of the Republic is the power to make regulations with legal force supplementing the more general terms of Acts of Parliament. This power is not expressly recognized by the Constitution. Its existence is to be deduced from the power and obligation of the President to enforce the law. This is in itself the sufficient source of a few regulations issued in practice; but normally the President of the Republic is expressly authorized by a given statute to supplement by regulation its provisions. Needless to say, ministerial decision is of particularly great practical importance in this respect; and the whole question is intimately connected with the primordial relationship of legislation and execution.[2]

Judicial Power of the Presidency. With respect to the best example of what are sometimes called "judicial powers of the executive," the Constitution of France asserts simply that the President "shall have the power of pardon." This is almost the only surviving example in theory or practice of the fact that the head of the French State was historically, and continued to be until the nineteenth century, as the English King in theory remains to the present day, the Fountain of Justice. Abandonment of the general theory in France is additional evidence of the tendency for French republicanism to view distrustfully principles connected with monarchy. A principle of this kind, as for example that involved in the power of pardon, apparently survives only where good practical reasons exist. Experience in all countries

[1] Cf. p. 151, *infra.*
[2] Cf. pp. 174-176, *infra.*

suggests that power ought to be vested in the executive to make, for special reasons, exceptions in respect of individuals who have been convicted in the regular, and possibly rigid, operation of the criminal courts. French students display some tendency to hold that exercise of the power of pardon is a personal prerogative of the President; but they are constrained to recognize that such exercise is subject to "ministerial collaboration"; and no subtle distinctions can obviate the fact that parliamentary government involves here, as elsewhere, ministerial responsibility and legislative control.

President and Parliamentary Government

Head of the State. The present position of the President of France is beyond any doubt different from the position that was envisaged by the Monarchist majority of the Assembly of 1871 which created the position. It is doubtful whether the position is fundamentally very different from that which would, with the passing of time, have been developed for a King, had a King remained or been restored as head of the State. The position of the President is, as has been suggested, essentially that of a constitutional monarch under parliamentary government. It may well be, as was asserted by a distinguished President of France, that the position is not fully understood by most Frenchmen. At the same time, most Frenchmen, in spite of sporadic suggestions that the position should be strengthened or that it should be abolished, accept and approve, rationally or instinctively, the presidency in the general form in which it exists today. They know or feel that the President personifies the French nation, that he exerts a legitimate and useful influence from a position above the conflict of partisan interests, and that he is an element in the parliamentary system of government which, if not in theory absolutely necessary, is, for practical purposes, in the conditions that have come to exist in France, indispensable.

3. THE REAL EXECUTIVE: (A) POLICY FORMING

Parliamentary Government and the Executive

Parliamentary vs. Non-Parliamentary Government. The student of government cannot too often recall that democratic government is, in the European context, parliamentary government.

The distinguishing characteristic of the parliamentary system is *ministerial responsibility*. By this is meant more precisely that the essential test of the existence of parliamentary government takes the form of effectively organized responsibility of the political executive to the representatives of the people. This differentiates parliamentary government at once from all non-democratic government and from such democratic government, more especially non-European government and still more particularly American democratic government, as is not parliamentary in character.

Executive Responsibility to the Legislature. Ministers exist in non-democratic Italy and Germany; and ministers, though not designated by that name, exist in the democratic United States. In neither case, however, are the ministers responsible in the manner of parliamentary government. In Italy and Germany, the ministers are not in any real sense responsible to the people, to the representatives of the people, or to anyone who is responsible to the people or their representatives. In the United States, the political executives that correspond to ministers are responsible to the President, who is in effect chosen by, and is responsible to, the people. The American President and other political executives are, it is true, responsible in a general sense and to a certain extent to the representatives of the people; but it is not the responsibility involved in the close relationship of executive and legislature in the parliamentary system. In France, all important considerations concerning the Ministers are affected by the dominant fact of parliamentary responsibility.

Political Executive Agents. Study of the French political executive involves study of the agents who compose the policy-forming element of the executive branch of government. Such agents have both an individual and collective existence. This is recognized, among other ways, by a provision of the French Constitution which, as will be seen presently, declares the Ministers collectively and individually responsible to Parliament.

The Prime Minister

President of the Council. Just as the principal element in the composition of the political executive consists of the Ministers, so, among the Ministers, first consideration belongs to the first, or Prime Minister. He is regularly known in France as the Head of the Government, in contradistinction with the Head of the State, namely, the President of the Republic. The Prime Minister is officially known, for reasons that will be noted in a

moment, as the President of the Council of Ministers. The office is not expressly mentioned in the Constitution; but it existed in law as early as 1815, it existed in fact at the time the Constitution was adopted, and it is at the present day well established in law and practice.

Head of the Government. The position of Prime Minister is based on the principle of *executive unity*. Active, unified direction being an indispensable characteristic of execution, a responsible Head of Government will, in the conditions of political democracy, develop where an irresponsible Head of the State exists. In France, just as the position of the Head of the State has tended to decrease in importance, the importance of the Prime Minister has tended to increase.

Majority Leader. The French Prime Minister, like his English prototype, may be defined in principle as an individual who may expect the support of a parliamentary majority. This principle, in the one case as in the other, is supposed to guide choice of the Prime Minister, by the President of the Republic in France and by the King in England. In actual fact, several important differences exist. Whereas, in England, the majority is normally composed of members of one party, of which the Prime Minister is the recognized leader, the regular situation in France is one in which the majority is composed of a coalition of political groups, the Prime Minister being at most the actual leader of only one group. In the result, the King of England, in choosing the Prime Minister, may only on rare occasions employ any discretion, and, in those instances, not much. In France, on the other hand, the existence of numerous political groups[1] brings it about that a majority can in theory be composed of many combinations, and often of several in practice. Moreover, in the case of a practicable combination, more than one leader of more than one group of those composing the combination, may well be capable of effecting it. Hence, the President of the Republic frequently has no little freedom of choice. In any event, the choice represents, in a definite sense, his personal decision. In practice, it is true, the President must be guided by the various elements of the existing situation. Moreover, there are a few rules of the game. Now and then, these rules point unmistakably to the logical choice. Even in such a case, the President of the Republic goes through a certain routine of consultations, which are naturally more important when more uncertainty exists. Thus,

[1] Cf. pp. 227-228, *infra*.

the President regularly requests and receives calls from the President of the Senate, the President of the Chamber of Deputies, the presidents of various political groups, and so on. Finally, on the basis of his consultations and his analysis of the situation, the President of the Republic arrives at a decision, and asks the man on whom his choice has fallen to form a ministry, that is to say, to be the President of the Council. The person invited usually asks a short time for consideration, which means that he wishes to consult various individuals, particularly leaders of parliamentary groups, with a view to determining whether he can effect a combination that can command a majority in Parliament. If he finds his efforts to be definitely unsuccessful, he declines the offer of the President. Otherwise, he accepts. Even then, a President of the Council sometimes arranges his combination and appears before Parliament, only to find that he has no majority. In this case, as in the case of an individual who is invited but declines, the President of the Republic has, practically speaking, made a mistake, which is simple evidence that there are limits to the discretion of the President. On the other hand, if a new President of the Council receives support from a majority, this, as has been suggested, does not mean that no other individual could have secured a majority. Considerations like these serve to define the amount of discretion actually possessed by the President of the Republic in choosing a President of the Council of Ministers.

The Ministers

Choice in Theory and Practice. The legal basis for the power of the President of the Republic to choose the Prime Minister is the constitutional stipulation that "he shall appoint all civil and military officers." [1] The same provision theoretically empowers the President of the Republic to appoint the other Ministers as well. However, in practice, the President of the Republic appoints the Prime Minister, and the Prime Minister appoints the other Ministers. The theory is manifest in the practice whereby Ministers are named by Presidential decree. However, since decrees must receive ministerial countersignature, nothing could be more natural than that the Prime Minister should in this case sign; and this is symbolic of the fact that the real decision is that of the Prime Minister. Incidentally, the matter of countersignature becomes somewhat anomalous in the case of the

[1] Cf. p. 112, *supra.*

decree which names the Prime Minister himself. In practice, the retiring Prime Minister countersigns the decree naming his successor, which ought logically to mean that the outgoing Minister accepts responsibility for choosing the incoming Minister. However, this is exceedingly unreal, as is shown when a former Prime Minister immediately attacks in Parliament, as he is likely to do, his successor. The question what would happen if a retiring Prime Minister should refuse to sign is, though academic in character, not without interest.

Creation of Ministries. The French Prime Minister is, in theory, limited by existing law in respect of the number of Ministers and other important political executives whom he may appoint. An Act of Parliament passed in 1920 contains a provision stipulating that "creation of ministries or undersecretaryships of State . . . shall be determined only by statute and shall become operative only after the Statute has been passed." However, the principle involved in this provision, a principle which regularly prevails in Anglo-American practice, is contrary to French tradition. In France, the sound principle is felt to be that the Head of the State ought to determine the number of Ministers and the extent of their powers. Under the parliamentary system, that means that the head of the Government, namely, the Prime Minister, ought to have the determination. Before 1920, such determination was, from a legal point of view, almost wholly effected by executive decree. Acts of Parliament were, generally speaking, not required. The representatives of the people had, after all, the last word; for they voted the money necessary for any ministerial organization to exist. This tradition was so well established that distinguished opinion in France has held the provision of the Act of 1920 unconstitutional, as being in conflict with the stipulation of the Law of February 25, 1875 empowering the President of the Republic to "appoint all civil and military officers." In any event, the 1920 provision has proved inapplicable. It has regularly been frankly disregarded. The composition, organization, and powers of the political executive have continued to be determined by executive decision, that is to say, by each new Prime Minister; and legal authorization has been supplied after the fact by parliamentary approval of the budget of expenditures.

Heads of Departments. The typical Minister is head of a great Executive Department, or Ministry. As such, he is said to be a "Minister with portfolio." Traditionally, the Prime Minis-

ister has also usually served as head of a department. The portfolio chosen has in the great majority of cases been either that of Foreign Affairs or that of the Interior. Approximately an equal number of Prime Ministers have served in each of these two positions; but the development has not been uniform. The Ministry of the Interior was well in the lead up to the World War; but the decrease in importance, both relatively and absolutely, of this department [1] has resulted in the fact that only two Prime Ministers have assumed its headship since the War; and the Ministry of Foreign Affairs is now slightly in the lead.

Ministers Without Portfolio. There have been on a few occasions in France "Ministers without portfolio." Such Ministers existed under the parliamentary system introduced after the Restoration; but, under the Third Republic, they did not appear until the time of the World War of 1914-1918. Since then, there have been a few examples in exceptional circumstances, usually in time of crisis. On such occasion, the arrangement may be of some general importance; but, on the whole, the position has not been regarded as being an attractive one. In the first place, the practical power involved is not great; and, in addition, such office space and employees as are available, if at all, are makeshifts. On the other hand, the situation is different in the case of the Prime Minister. Viviani in 1914, Poincaré in 1928, Doumergue and Flandin in 1934, Blum in 1936, and Chautemps in 1937 assumed the position of President of the Council without Portfolio. By this arrangement, the position of the French President of the Council is assimilated to that of the English Prime Minister, who regularly assumes the sinecure position of First Lord of the Treasury in order to be free to devote his efforts to leadership of the political executive. In France, the practicability and attraction of the arrangement have been strengthened by definite legal organization of the position of Presidency of the Council and by the acquisition in 1934 of the Hôtel Matignon, former embassy of Austria-Hungary, as the official residence for the President of the Council and his staff.

Ministerial Titles. Since the beginning of the Third Republic, the smallest number of Ministers that has existed at a given time is 9, the largest 21. The list of Ministers [2] drawn up by M. Daladier in April of 1938 is as follows:

[1] Cf. p. 214, *infra.*

[2] A few alterations, principally in personnel, were made in connection with the Munich crisis and the outbreak of the War of 1939. The list given is more typical than that drawn up by M. Reynaud in March of 1940.

Prime Minister and Minister of National Defense
Vice-President of the Council and Minister of Coordination
Minister of National Economy
Minister of Justice
Minister of the Interior
Minister of Foreign Affairs
Minister of Finance
Minister for Colonies
Minister of Pensions
Minister of National Education
Minister of Air
Minister of the Navy
Minister of Public Works
Minister of Commerce
Minister of Agriculture
Minister of Posts, Telegraphs, and Telephones
Minister of Labor
Minister of Public Health
Minister of the Merchant Marine

Lesser Policy-Forming Executives

Political Positions. Viewed distributively, the French political executive is composed of several other kinds of agents than Ministers. In this respect, mention may be made of (1) Under-Secretaries of State, (2) Commissioners, and (3) Members of the Individual Cabinet of a Minister.

Under-Secretaries of State. On a plane next below that of the Ministers stands a group of under-ministers known as Under-Secretaries of State, a title borrowed from the *ancien régime.* In recent times, the number of Under-Secretaries has varied within somewhat wide limits. Some Prime Ministers have managed to get on with none at all, whereas some have employed a considerable number. This question, as well as the matter of their position and functions, is determined, in accordance with the tradition that has been noted, by executive decision, that is to say, by the Prime Minister. The primary consideration is political, the Prime Minister finding in this institution a valuable means of strengthening his position with the political groups of the Chambers; but, in the case of certain technical governmental services, the office of Under-Secretary may serve as a means of placing a capable civil servant in a position of directorship. What may be regarded as the typical Under-Secretary is one who is an assistant to the Minister, his title including, as does the Minister's, the name of the Ministry. He is a subordinate who relieves the Minister of a certain part of his duties. However, not

only do Ministries exist in which there is no Under-Secretary, but in some cases the Under-Secretary has no departmental duties and in others he is only nominally subordinate to the Minister, his position being that of directing an important governmental service that is practically autonomous. In this last case, an under-secretaryship has on occasion been elevated to become a Ministry.

Commissioners. Commissioners, in some cases designated as High Commissioners, are political executives occupying a position just below that of Under-Secretaries. These Commissioners are taken from among members of Parliament. Unlike Ministers and Under-Secretaries, they receive no salaries. They serve the general purpose of strengthening the position of the Cabinet in Parliament and the particular purpose of directing, in accordance with the policy of the Cabinet, a service which would, otherwise, be under the control of a civil servant.

Ministerial Cabinet. Finally, the members of what is known as the Cabinet of a particular Minister ought to be listed among the agents who compose the political executive. Though this institution is frequently considered in connection with French civil servants and their departmental organization and though it normally contains a certain number of civil servants, its members, nevertheless, are in actuality members of the political executive. More specifically, they lose their position when there is a change of Ministry. They are chosen freely by the Minister, and they possess his personal confidence. There has in practice been a tendency for a Minister, just before leaving office, to make provision for the members of his personal Cabinet. In the result, persons have in this way entered the civil service without competition, or persons already in the civil service have secured premature promotion. However, legal provisions guard to some extent against these abuses.

Council of Ministers and Cabinet Council

Legal and Extra-Legal Collective Existence. French Ministers, in their collective capacity, form either (1) the Council of Ministers or (2) the Cabinet Council. The difference between the two institutions is in French practice expressed in several ways. The simplest distinction is a formal one. It is based on the fact that the President of the Republic is present at a meeting of the Council of Ministers but not present at a meeting of the Cabinet Council. However, the President of the Republic is not

a member of the Council of Ministers. He has no vote. Hence, the President of the Republic marks no difference in the composition of the Council of Ministers and the Cabinet Council. As a matter of fact, the composition is in general the same, though it is not in either case precisely fixed. All the Ministers, whether with or without portfolio, are members of both. Normally, the same thing is true of the Under-Secretaries, though, on a few occasions, they have not met with the Council of Ministers, but only with the Cabinet Council. The presence of the President of the Republic at a meeting of the Council of Ministers is an indication of the fact that the Council of Ministers is a more formal body than the Cabinet Council. This difference has also been expressed by saying that in the Council of Ministers there is no smoking but that in the Cabinet Council there is. However, the fundamental distinction is that the Council of Ministers has a legal collective existence, its decisions having the force of law, whereas the Cabinet Council is an extralegal and political body. The Council of Ministers is several times mentioned in the Constitution of France, certain actions being defined as requiring decision "in Council of Ministers"; and Acts of Parliament frequently employ the same expedient. Where conditions are such that it seems desirable for the Ministers as a whole, rather than a single Minister, to direct the carrying out of provisions of law, an Act of Parliament stipulates that the decisions shall be made "in Council." These decisions are formulated as decrees of the President of the Republic, signed by one or more Ministers. In the more informal meetings of the Cabinet Council, discussion and decisions are political in character. Conditions are more propitious there for political action, though there seems to be no reason why such discussion and decision should not likewise take place on occasion in the Council of Ministers.

Ministerial Responsibility

The Ministers in Parliament. The close relationship between legislature and executive that is characteristic of the parliamentary system of government and the nice equilibrium between the law-making and law-enforcing authorities that is the ideal of the system are in practice effected through the existence of the Cabinet. This is manifested simply in France by the fact that members of the Cabinet Council are in practice regularly members of Parliament. In theory, the President of the Republic may choose as a Minister anyone he likes, the law stipulating no special

requirements; but, in practice, the conditions in which parliamentary government operates strongly favor members of the Chambers. In principle, the Ministers are leaders of a parliamentary majority. As leaders, they must in greater or less degree direct the principal activities of the Chambers. They must present and support their views and proposals; and they must defend their actions. This suggests that they should at least be present in Parliament. As a matter of fact, the Constitution of France accepts this aspect of parliamentary government through incorporation into the provisions of the Law of July 16, 1875 the following stipulation:

> The ministers shall have entrance into the two Chambers and must be heard whenever they request it.

This arrangement, it may be noted, is even more convenient, in respect of a close relation between legislature and executive, than the corresponding practice in England. There, it will be recalled, the principal Ministers must according to convention belong to one or the other of the two Houses; but as members of one they cannot appear in the other. In France, they may be present in both. Thus, for example, when a Senator is Prime Minister, he spends a great part of his time in the Chamber of Deputies, which becomes the center, as it were, of his Parliamentary activity. Incidentally, another provision of the same Law of July 16, 1875 adds the following possibility:

> They may be assisted by commissioners who shall be designated, for the discussion of a specific bill, by decree of the President of the Republic.

Thus, the Ministers may be accompanied on the Government Bench in the Chambers by civil servants, who may even take part in debate. Nevertheless, in spite of constitutional arrangements, which in theory make possible taking Ministers without disadvantage from outside Parliament, such practice is rare. Only a relatively few exceptions, those mostly in the Defense Departments, have occurred. Where civilians have been involved, they have usually sought a seat in one of the Chambers. Thus, political considerations tend to assume more importance than legal provisions. The leaders of a Parliamentary majority naturally tend to be found among the members of that majority.

Control by Parliament. If, from the point of view of the Ministers, leadership in Parliament is a characteristic feature of parliamentary government, control by Parliament over the Min-

isters is the obverse of the proposition. Fundamentally viewed, this relationship is *ministerial responsibility* in the special form that it assumes under the parliamentary system. In France, this relationship between legislature and executive is commonly said to be based on two provisions of the Constitution. The first, contained in the Law of February 25, 1875, is this:

> Each of the acts of the President of the Republic must be countersigned by a minister.

The second, found in a later article of the same Law, is phrased thus:

> The ministers shall be collectively (*solidairement*) responsible to the Chambers for the general policy of the Government, and individually for their personal acts.

As was well known in France in 1875, the sanction for ministerial responsibility, under the parliamentary system, is political in character. It takes the form of *resignation*. Failure to employ this expression in the Constitution is not surprising. Resignation had frequently been practiced in France before the time of the Third Republic, especially in the period from 1815 to 1848; and examples actually occurred during the life of the National Assembly that framed the Constitution. Hence, although employment without definition of the word *responsibility* in the Constitution might theoretically have given rise to a non-parliamentary relationship between legislature and executive, without violation of the letter of the law, circumstances insured that parliamentary government should be established.

The Senate and Responsibility. Interest attaches to the fact that in France the Constitution declares the Ministers to be responsible to the Chambers, use of the plural suggesting that a literal interpretation would result in responsibility to both the Chamber of Deputies and the Senate. However, according to the classical rules of parliamentary government, that is to say, according to the rules observed in England, the Cabinet is commonly regarded as being responsible to only one House of Parliament, namely, to the body directly elected by the people. This was well understood in France in 1875; and, in point of fact, the use of the plural number in the Constitution was merely use of a traditional form of expression. The assumption had been and was that Ministers were responsible only to the Chamber of Deputies. Under the Third Republic, this remained the situation for the first two decades. However, since 1896, Cabinets have on

some half dozen occasions resigned as a direct immediate result of votes in the Senate. Hence, the question whether Ministers are responsible to the Senate is a question of fact, the answer being in the affirmative. Whether this ought to be the case is an academic question. In any event, responsibility to the Chamber of Deputies remains primary.

Individual vs. Collective Responsibility. French ministerial responsibility is in principle collective. Though, from the nature of things, "subordination to the Prime Minister" is not so definite a characteristic of parliamentary government in France as in England, nevertheless, in French practice, a similar Cabinet cohesiveness exists on the surface. The resignation of a single Minister, without the downfall of the whole Cabinet, is very rare. Though the Constitution, in speaking of individual ministerial responsibility, doubtless affords an unnecessary legal foundation for the exceptions, an individual Minister resigns only on the unusual condition that an act or policy of his is not an integral part of "the general policy of the Government." Such an exceptional situation can be generally recognized by the formal fact that the matter involved has not been discussed in Cabinet meeting and that the Prime Minister does not, with respect to it, "put the question of confidence."

Ministerial Instability

Shortlived Governments. The matter of the collective responsibility of French Cabinets is closely connected with the phenomenon of *ministerial instability.* The relative rapidity with which Cabinets succeed one another in France is well known. Instability in this sense has become proverbial. The situation is often commented on and frequently criticized adversely. In reality, although the implications of such judgments may easily be misleading, frequent change of Cabinets is a literal fact. The fact is easy to establish by means of simple statistics, although the figures applicable at any given time are likely soon to be altered because of the very fact of instability. The average life of ministries in the course of the Third Republic has not greatly exceeded six months. There have been ministries that have lasted literally only a day. Some have had a life of only a few weeks. Long ministries have been definitely exceptional.

Appearance and Reality. The simplest explanation of the frequency with which Cabinets fall from power in France is to be found in certain characteristics of the French multi-party sys-

tem. Not only does the existence of several parties in the country, no one of which can in practice expect to secure for its members a majority of seats in Parliament, result in the fact that the majority on which a Cabinet depends is a coalition; but, more especially, the existence of numerous splinter and transitory political groups in Parliament which do not correspond closely to the organized parties of the country causes a Cabinet majority to be a *weak* coalition. The defection of one small group, often for reasons of no great moment, may disarrange the majority and cause the formal resignation of the Cabinet. In such circumstances, clearly only one or, at most, a few of the Ministers are likely to be directly involved. Therefore, the question presents itself why, in such circumstances, resignation of the Cabinet could not be avoided through simple and minor substitution in the Cabinet and through small adjustment in the majority. The answer is that such a solution is not only a possibility but is, in a definite sense, often actual practice. From a formal point of view, it is true, the solution is inconsistent with collective responsibility; and regard for the form of things is so great in France that appearances must be saved. In practice, on the other hand, the solution is in substance realized through a slightly different, but well established and well recognized procedure. One or more Ministers can be got rid of, while the appearance of collective responsibility is maintained, by the simple expedient of resignation on the part of the whole Cabinet, followed by a new Cabinet composed of the same Ministers except the one or more undesirables. Such Ministers are said to be "debarked." The Cabinet is said to be "done over" or "replastered." In the result, certain individual Ministers, it should also be remembered, are sometimes maintained in the same position in several successive Cabinets; and continuity of policy suffers much less than superficial reasoning might suggest. For example, Briand was for eight years without a break Minister of Foreign Affairs. Thus, a picture of rapidly changing Governments is definitely a misleading one.

Public Opinion and Fundamental Stability. Some inconvenience, it must be recognized, attends the fall in France of a ministry which is replaced by one similar to it; and yet the very similarity is an indication that no fundamental alteration of public opinion has occurred. Indeed, in this basic sense, governmental stability is at least as great in France as elsewhere. If only ministerial changes should be reckoned that result from deep-

running movements of opinion, the number would not appear inordinately large. In this context, the multi-party system, it may be noted, can be and has been defended, justified, and advocated on fundamental grounds; and the same position has on occasion been maintained in England since the time at which the tendency appeared there for a three-party system to prevail. The basic argument goes to the very nature of representation and of government by majority. In the second respect, by no means all questions, it must be clear, can be satisfactorily solved by the simple expedient of a vote. However well majority rule may in a given country or community be established, solution of a matter through a majority vote is efficacious only where the matter is of such a character that general agreement exists on the convenience of a decision. A solution which leaves a cohesive, determined, and unreconciled minority is no real solution. The two-party system, it may be argued, lends itself to the disadvantages of this very situation. In any event, it would not be difficult to find in English and American history examples of the unfortunate results of swings in the matter of policy from one side to the opposite. Under the multi-party system, on the other hand, such swings are very unusual. The existence, in connection with an important question of policy, of a real, as distinguished from a transitory, majority means something more than numerical superiority. It is an indication that varied views and interests have been reconciled and that genuine consensus has been realized. The fact that in France solution of fundamental questions must generally await such a situation results in marked consistency in the development of policy. Such consistent development is a manifestation of what the French sometimes call "conservatism in the highest and best sense of the word." A very important exception proves the rule. It concerns the momentous question of religion. Here above all places, as anyone will doubtless agree, a convinced minority will have little inclination to accept the decision of a numerical majority. And yet, in France, as there will be occasion later to observe, an attempt was made at the beginning of the present century to settle the relations between Church and State through law that represented the imposition of the will of a majority on an unreconciled and irreconcilable minority. In the result, a highly unsatisfactory situation exists, which involves much controversy and bitterness; and a flaw appears in the record of consistent development of national policy.

Dissolution. It would, of course, be a mistake to suggest that the multi-party system approximates to perfection or that ministerial instability in the sense in which it exists in France is desirable. Both may be and are subjected to reasonable criticism. Both are recognized, in France as well as elsewhere, to be susceptible of worth-while reform. For example, many students, it should be noted, are of opinion that the regular employment of dissolution would result in a tendency for Cabinets and changes of popular attitude in the country more nearly to coincide. Such a development would undoubtedly present conditions more favorable to improved leadership. In any event, the point may be emphasized again that, as things are, instability is less serious than it appears on the surface. In addition to the considerations already noticed, the legislative branch of government, as will presently be seen,[1] organizes itself and arranges its procedure in such a way as to offset in no small degree executive weakness. So far as the executive itself is concerned, a further compensating factor exists in the form of the stability and continuity of the permanent civil service.

4. THE REAL EXECUTIVE: (B) ADMINISTRATION

Department Structure

Political vs. Routine Executives. In French theory, the political executive gives direction to the governmental process. So far as the individual Ministers are concerned, this direction takes the form, in the case of most of the Ministers, of oversight of Ministries, or executive departments. The structure of these departments is, in general outline, uniform. The agents that compose a department fall into two unequal classes. One of these consists of the Minister and the other political officials. The latter, in turn, in some cases take the form, as has been seen, of one or more Under-Secretaries and Commissioners; and there is regularly a Cabinet of the individual Minister. The second, and many times more numerous class is composed of the permanent civil servants. They are currently known in France as "functionaries." They perform, in principle under the direction of the political executive, the actual task of conducting the public services.

[1] Cf. p. 151, *infra.*

Administrative Organization. A French ministerial department is composed of a number of bureaus. These bureaus are the cells of administrative organization. Into them are grouped functionaries having to do with some primary aspect of departmental business. In general, though much variation of detail exists, several bureaus compose a division, several divisions compose a direction, and several directions compose the Ministry. The head of a direction is a director, sometimes known as the general director. There are likewise heads of divisions and heads and assistant heads of bureaus. Generally, there is no permanent head of a ministry corresponding to the well-known English civil servants who hold such positions.[1] Directors in most Ministries meet in council once a week or oftener for the purpose of coordinating departmental work; but this arrangement is not regarded as being highly successful.

Administrative Reorganization. The French tradition for vesting large power in the executive branch of government with respect to the composition and organization of administrative departments [2] would seem in theory to possess genuine advantages as regards logical and effective grouping. In practice, the situation is no doubt better than it would be if organization were for the most part dependent on Act of Parliament. At the same time, the kind of overlapping, duplication, and illogical arrangement that has given rise to the movement for administrative reorganization in the United States is far from unknown in France. However, efforts at reform are frequently made; and it may be that if the institution of a Prime Minister without portfolio becomes firmly established, the head of the Government, freed from the duties of directing a Ministry, can give increasing attention to administrative organization as a whole. When Léon Blum became Prime Minister in 1936, he gave some indication of what can be accomplished, notably by reforms in certain Ministries and by the grouping of administrative departments into seven "spheres."

Technical Councils

Expertness and Advice. A particularly salient characteristic of French administrative organization is the existence of a multitude of advisory and consultative bodies, attached to various

[1] The permanent head of the Quai d'Orsay, as the Ministry of Foreign Affairs is currently called, is a well known exception.

[2] Cf. p. 119, supra.

administrative agents. Just as the bureaus in principle prepare the material on which the Minister bases a decision, so councils, to which may be added committees, commissions, offices, and the like, have the general function of furnishing expert views calculated to enlighten the Minister on matters concerning which he has to make decisions. Such bodies are constituted in a variety of ways, since they are themselves of greatly different character.

The Council of State. At the very top, associated with the President of the Republic in his administrative capacity, that is to say, with the Ministers taken collectively in that capacity, is the Council of State. This body of ancient lineage has in principle as one of its functions the assistance of the President of the Republic in administrative matters. Thus, the President of the Republic, that is, the Ministers, must, according to law, consult the Council of State in certain instances, though there is no compulsion that the advice be accepted. Indeed, the real importance of the Council of State, as will be seen,[1] grows out of its performance of other functions, especially those of a judicial character.

The National Economic Council. In the second place, various technical councils and similar bodies are attached to the several Ministers. Of these, primary interest attaches to bodies associated with the Prime Minister, of which especial mention ought to be made of the National Economic Council. Created by executive decree in 1925, this Council has been several times modified by Act of Parliament. Such modifications have marked stages in the Council's great growth in importance. At present, the Council is composed of about 175 members chosen by professional organizations designated by decree. It is organized into twenty sections, each of which consists of an equal number of employers and employees. The function of the Council is to study any question that is of importance to the national economy, to formulate opinions, when so requested by the executive or Parliament, concerning pending bills and decrees, to observe their application and operation, to suggest desirable regulation of production and distribution, and, on request, to act as arbitrator in economic controversies.

Advisory Bodies and the Ministries. Of the large number of technical bodies attached to the several Ministries, some are naturally more important than others. All serve the important purpose of furnishing Ministers with expert opinion on which

[1] Pp. 190-191, *infra.*

to base decisions, while leaving full responsibility, in accordance with democratic principle, to the Ministers. Examples of technical bodies associated with the Ministries give some idea of the kind of institution that is involved. Thus, there are, among many others, a Superior Council of Agriculture and a Council of Waters and Forests, associated with the Ministry of Agriculture, a Superior Council of Commerce and Industry, attached to the Ministry of Commerce, a General Council of Bridges and Roads, attached to the Ministry of Public Works, and a Superior Council of War, a Superior Council of Labor, and a Superior Council of Colonies, associated respectively with the Ministries of the same names.

The Functionaries

Central and Local Agents. In general, French functionaries of a given department either serve as part of the central organization of the Ministry in Paris or they are employed "in the field," that is to say, in the various communities that make up the country, to dispatch the affairs of the national government. By military analogy, M. Hauriou denominates the two classes of functionaries as "non-combatants" and "combatants." [1] This terminology, it will be noted, is by no means identical with the use of the terms *staff* and *line* in the United States. So far as the combatants are concerned, it should be remembered that administration in France is conceived to include local government as a whole, that, consequently, all organs and agents of local governments are administrative in character, and that, even where further classification distinguishes between administrative agents of the national government and functionaries connected with local government or administration, these latter officials are generally both agents of local government and local agents of the national government. With due allowance for difficulties connected with statistics and definitions, it may be said that there are, all in all, nearly a million French functionaries. They are divided approximately equally into officials who perform general governmental services and officials who are concerned with agencies, such as the postal system and industrial departments, that are more closely similar to private business.

Recruitment. The great majority of French functionaries are said to be *appointed.* In this respect, it is perhaps worthy of

[1] Hauriou, *Précis de droit administratif et de droit public* (11e éd., Paris, 1927), p. 121.

note that the concept of appointment is somewhat narrower in France than in the United States. According to French theory, an official is said to be appointed only if power of choice is in the hands of one person. If designation is the function of more than one person—for example, of a council or commission or committee—choice is said to be by election. Though a certain number of functionaries are in this sense elected, appointment is the rule. According to the Constitution, as has been seen,[1] general power of appointment is vested in the President of the Republic. This, of course, means that in practice, choice actually belongs to the Ministers, though many lesser officials are naturally appointed by functionaries—such, for example, as the Prefects—who are themselves appointed by a Minister. In both cases, however, the important basic fact is that regard is had for the "merit system." In other words, entrance to the service and improvement of position in the service are determined by competition. There exists only a very small amount of political influence and intrigue.

Tenure. General security of tenure is an established principle in France. The Council of State, particularly, has afforded strong protection to public officials against discrimination and injustice. Indeed, things have been pushed so far that, if anything, the evil consists of inability to get rid of incompetent functionaries rather than danger of loss of position through political considerations. This, in turn, is only one kind of evidence of a somewhat rigid and mechanical application of the merit system. Promotion, for example, is, though reasonably certain, somewhat slow. A pronounced tendency to give most weight in the matter to seniority results in the fact that the mediocre functionary is advanced too easily, whereas public servants of outstanding qualities receive insufficient encouragement. The salary scales and pensions are far from satisfactory, and improvement is realized only very slowly. Increases furnish a simple opportunity of appealing to the taxpayers that is too effective for establishment of adequate remuneration to be easy.

Competitive Examinations. The characteristic feature of recruitment of French governmental personnel through competitive examination is its lack of unity. Thus, there is no agency corresponding closely to a Civil Service Commission. The several Ministries establish separate systems of recruitment and formulate separate solutions of kindred personnel problems. No Ministry is without a special establishment concerned with these prob-

[1] P. 112, *supra.*

lems; and several Ministries have more than one such establishment. The matter of the creation by law of a unified and uniform system has been much discussed in France; but, so far, no general act of wide application has been passed by Parliament. In spite of this, however, the rules of the several departments are far from being wholly dissimilar. There is at least a tendency for similar problems to be solved in a similar way. More especially, organizations of functionaries have been instrumental in securing the establishment of a considerable measure of uniformity in respect of conditions of employment. Nevertheless, in the basic matter of recruitment, the several Ministries are practically autonomous. All in all, a great variety of examinations is employed.

Public Servants and the Educational System. Recruitment for specific positions in particular subdivisions of individual executive departments is regulated in considerable detail by legal stipulations established by a Ministry. Thus, although a candidate for entrance to the French public service is guided by few rules of a general and uniform character, there is no lack of fixed and certain regulations, which he may learn in advance, determining the matter of recruitment for particular positions. Concerning these positions, ministerial stipulations incorporate the accepted principle that a close correlation ought to exist between the public service and the schools and universities. The highly coordinated and integrated system of state education, consisting of primary instruction, of secondary studies, which, roughly speaking, go up through what is equivalent to the first two years of American college education and which lead to the Baccalaureate Certificate, and of university education, maintains exceedingly high intellectual standards. Few American students have any idea of the situation that prevails in this respect in France. Conversely, on the other hand, the French are at least acquainted with the view, which is so widespread in the United States, that there exists a royal road to learning, along which easy and pleasant ways may be and ought to be substituted for hard work and discipline. Thus, in France, a certain amount of criticism is persistently directed at the several levels of the educational system, much of which is summarized in allusions to "the stuffed cranium." Nevertheless, the established educational system, in respect of which opportunity is increasingly democratic in the sense that liberal arrangements exist whereby genuinely able students of limited means may reach the top, remains in a strong position. This is reciprocally connected with the fact that

in the French scale of values intellectual achievement retains the highest place. Hence, the simple requirement, which exists in practically all cases, that certificates and diplomas must be possessed as a preliminary to mere admission to competition for places in the public service insures that entrance to the service can be gained only after rigorous training.

Classes of Public Servants. Application of the principle of correlation between the educational system and recruitment to the public service results in the fact that the highly numerous competitive examinations fall, in a very general sense, into classes determined by whether the competition assumes successful completion by the candidate of the primary, the secondary, or the university stage of education. Corresponding groups of public servants include routine clerical and manipulative workers, more responsible clerical workers, and holders of the highest administrative and professional posts. With university education, in this respect, should be associated as well education in the famous technical schools maintained or controlled by the State. The most brilliant graduates of these schools and of the universities are the typical competitors for the highest administrative and professional positions. The competitive examinations in these cases are exceedingly difficult. Here, as indeed in practically all instances, searching written examinations are supplemented by oral examinations. The examining authority is normally established in the department concerned. It is generally made up of officials in the service, to whom are added persons from the outside, particularly from academic life.

Equality of Opportunity. In principle, the French public service is open to everyone. However, this principle has necessarily to be modified in certain respects. In the first place, certain legal provisions establish minimum qualifications and otherwise limit the possibility of entrance to the service. These provisions, in addition to requiring a certificate of education, regulate questions of citizenship, age, sex, and various other matters. Women have found some place in the public service, the period of the World War of 1914-1918 having been especially notable for development in this respect. However, many positions are by law reserved to men. From the social as distinguished from the legal point of view, limitations inherent in the nature of things, of which the undoubted fact of human inequalities is a principal consideration, determine success or failure in a system based on a particular concept of talent. Thus, the well-to-do have a certain

advantage over the poor. This, in turn, grows in large part out of the fact that, in spite of the scale on which free education is practiced in France, children from families that are well off are in a somewhat better position to secure the education necessary to enter the public service. As liberal educational reform continues to make headway, a corresponding development of the public service is sure to result. Naturally enough, moreover, children from families which already have members in the service are, through influence and example, likely to wish to enter the service. They are, furthermore, likely to be better prepared to do so. However, such candidates are not infrequently unsuccessful in competition; and the modest means of the most frugal public servants are seriously strained by the effort of a son to secure entrance to the service. Before the World War of 1914-1918, public officials were, as a rule, persons of some private means, willing to remain in a governmental career. Post-War conditions not only affected the economic status of such classes in and outside the service, but caused young people of outstanding ability to seek positions in business rather than employment in the public service. In the second respect, however, depression has in recent years made private employment so uncertain that a swing back has occurred towards increased prestige of a governmental career. Finally, a consideration that is not without interest consists of the fact that a disproportionately large number of French civil servants are Southerners. Statistics are uncertain and are not easy to establish, but there is no doubt of the fact. The explanation is another matter. In general, people from the South of France appear to possess qualities which cause government service to appeal to them and which make them successful in the kind of competition that is involved.

Bureaucracy. Various aspects of the French public service and of French public servants have been satirized and even burlesqued. The French themselves have been foremost in criticism of this kind. Red tape, procrastination, and other aspects of "bureaucracy" have become proverbial. This is no doubt natural in a centralized country where functionaries are exceedingly numerous and in an individualist country where a latent antipathy exists for government and, hence, for its agents. At the same time, the French public service has a number of admirable qualities. The functionaries are frequently genuinely educated persons of real culture, hard-working and devoted to the interests of the country. They are not, as is sometimes said, all devoid of sense of

responsibility and initiative. No small number of salutary reforms have emanated largely from the civil service; and it cannot be too often repeated that it is primarily to the public servants that are owed continuity and stability in the process of government.

Unionization. French functionaries are organized on a large scale. This situation is the result of a development that began before the opening of the twentieth century. The whole question has, not unnaturally, been the subject of keen discussion. Undoubtedly, a considerable discrepancy exists between law and fact. In practice, not only public employees who perform functions that are practically identical with those performed by workers in private industry but also officials whose activities are more specifically governmental in character have felt, not without reason, that in the absence of organization their interests would be unlikely to receive much attention. As a matter of fact, such organizations have, as has been seen, in practice been successful in securing improved conditions of employment. Some jurists have gone so far as to assert that the special character of all governmental employees renders all law dealing with association inapplicable to them and to hold that, consequently, all organizations of functionaries are illegal. The courts have in their decisions by no means accepted this sweeping view. They have made a distinction between *associations,* which are valid, and *unions (syndicats),* which are forbidden. This distinction, in turn, is criticized by some jurists as untenable. Indeed, the legal situation is far from clear. Moreover, the situation has been complicated by a tendency for governments of the day to have more regard for political considerations than for judicial decisions. Students of the subject are unable to arrive at any agreement in terms of abstract principle. Such uncertainty explains the fact that, of the numerous bills which have been introduced into Parliament in recent years, none has succeeded in being enacted into law. Of somewhat more than ordinary interest in this respect is a proposal made in 1934 for amendment of the Constitution, when constitutional reform appeared for a while to be a foregone conclusion. During the acute crisis that followed at that time the Stavisky scandal and the February riots, M. Doumergue, upon being recalled from retirement for the purpose of dealing with the situation, included in a series of proposed constitutional amendments that came to be called the Doumergue Constitution one that was intended to regulate the status of public servants.

The provision which was on that occasion suggested was couched in the following terms:

> The State shall assure its functionaries of stable employment and a guaranteed career. Every unjustified or concerted interruption of their service shall be deemed to sever the bond that unites them to the State.

The first part of this provision would doubtless be accepted by everyone as unobjectionable. Indeed, it is, as has been seen, a description of the general situation that exists at present. So far as the second part is concerned, the ambiguity of the terminology is such as to have caused the body of public officials to fear that interpretation might view every "concerted" interruption of the public service as "unjustified." Had the amendment been adopted, everything would have depended on the statutes enacted with a view to its application. Nevertheless, the matter of unionization ought doubtless to be regulated by an Act of Parliament; and, in the not too distant future, solution of this kind will probably be realized.

Minister and Civil Servant

Amateur and Professional. The relationship between the Ministers and the functionaries is, as is often said, one of amateurs and experts. The Ministers are men of executive ability who are politically responsible for the decisions that are made. The functionaries furnish the technical knowledge and dispatch the routine business. From the nature of the case, these government officials may exercise substantial influence on the course of affairs. They have through great persistence various means of getting their way. This tends to be true in any country; but, in France, with its high degree of centralization, with its consequent large number of public servants, and with its ministerial instability, the tendency is peculiarly pronounced. Striking accounts have been penned of conscientious Ministers who have started out with excellent intentions of giving personal attention to the business of the Ministry, only to find that lack of time and experience, coupled with the large number of affairs demanding consideration, forced them in the end to sign without reading and, hence, to be at the mercy of the functionaries. Such a situation would seem in some degree to be inevitable. On the other hand, the Cabinet of the individual Minister exists precisely for the purpose of lessening the difficulty of the situation. It is not hard to imagine that a competent Cabinet composed of friends of the

Minister who know his policies and views and are worthy of his confidence may do much to avoid the worst results of routine, formalism, and red-tape. Even more important are the character and personality of the Minister himself. Men of worth have made, and may make, a genuine imprint on an executive department.

CHAPTER VI. THE LEGISLATIVE BRANCH OF GOVERNMENT

1. THE COMPOSITION OF PARLIAMENT

The Two Chambers

Bicameralism vs. Unicameralism. The Parliament of the Third Republic, composed as it is of a Senate and Chamber of Deputies, is contrary to the French Republican tradition of unicameralism. The simple explanation is, of course, that bicameralism was a compromise resulting from the establishment of a Republic by a Monarchist Assembly. During the earlier years of the Third Republic, advocacy of abolition of the Senate was heard from time to time in Republican quarters; but the Senate succeeded in gradually establishing itself on an apparently firm foundation. At present, the bulk of Republicans undoubtedly accept it. Though, in recent years, some recrudescence of opposition to the Senate by socialists and young liberals has appeared, its position seems, barring some unforeseen event, assured for some time to come.

Size. The Senate is at present composed of 314 members. This number was established by Act of Parliament in 1919. The number 300, which had, as has been seen,[1] remained constant since 1875 in spite of "deconstitutionalization" of the constitutional provision originally establishing the number and in spite of abolition of life Senators, was increased by fourteen at the end of the World War, in order to give representation in the Senate to the parts of Alsace-Lorraine restored to France. The number of members composing the Chamber of Deputies is at present 618. This is determined by an Act of Parliament of 1927, as amended.

Terms. The legal term of members of the Senate is nine years, of the Chamber of Deputies four. In both cases, these terms at present rest on the basis of statutory provisions; and,

[1] P. 102, *supra.*

hence, they could be changed at any time by Act of Parliament. The term of nine years for the Senate was originally established by the Constitutional Law of February 24, 1875; and, though here again the Constitutional character of the provision was removed by amendment in 1884, tradition has so far been sufficiently binding to prevent statutory change. The tradition of four years for the Chamber is also apparently strong. The period was first established by the Organic Law of November 30, 1875, on the Election of Deputies. Except for slight extensions in 1897 and 1923 with a view to establishing spring elections and except for prolongation of the term in 1918 because of the World War,[1] the term established in 1875 has been maintained. Since dissolution has not been employed since 1877, no Chamber since that time has had its statutory term brought to a premature end.

Renewal. The Organic Law of November 30, 1875, stipulates that "the Chamber shall be renewed integrally." The Constitutional Law of February 24, 1875 provided for partial renewal of the Senate "by thirds every three years." Both arrangements continue to prevail. In the Senate, the system employed, now regulated by statute, involves alphabetical division of the Departments into three series, all the Senators in all the Departments in a given series being normally elected at the same time. Some sentiment for partial renewal of the Chamber of Deputies has manifested itself. In fact, the Chamber on one occasion passed a measure, which died in the Senate, extending the term of the Chamber to six years and stipulating for partial renewal. Such an arrangement, it may be noted, would render even more difficult than at present revival of the practice of dissolution. On the other hand, the practice of integral renewal furnishes an important opportunity periodically to test public opinion on a nation-wide scale. Senatorial elections themselves are some indication of popular sentiment; and, inasmuch as the elections coincide with elections of Deputies only once every twelve years, normally they furnish, between general elections, information concerning national trends. In this respect, the same purpose is served by special elections, made necessary from time to time by vacancies caused "through death, resignation, or otherwise." Legal provisions require such an election to be held within three

[1] It is interesting to note that, in the critical conditions connected with the outbreak of the War of 1939, the term of the Chamber was increased by executive decree. Cf. p. 176, *infra.*

months of the occurrence of the vacancy, except where general elections will ensue within six months.

Eligibility. Statutory provisions regulate in considerable detail the matter of eligibility to the Senate and Chamber of Deputies. Fundamentally, the situation is relatively simple. The basic qualification is eligibility to become a voter. This, it may be noted, renders women ineligible. There exists an age requirement of 40 in the Senate and of 25 in the Chamber. In the Chamber of Deputies, a formal declaration of candidacy one week before election is necessary; but this is not of much practical importance, and is not required for the Senate or, incidentally, for local elections. As in Great Britain, a candidate for Parliament need have no connection through residence with the community in which he seeks election. However, no person may be a candidate in more than one place at the same time. In practice, a small minority of members of the Chambers sit for constituencies in which they have not their homes. From the point of view of national interest, this possibility of wide choice possesses manifest advantages. The French theory that a member represents not a constituency but the nation is undoubtedly sound; but, in modern conditions, the close relationship between national government and local politics prevents the theory from having wide application.

Ineligibility and Incompatibility. In connection with eligibility, a few examples of persons disqualified to sit in Parliament may be noted. They include members of families that have reigned over France, naturalized citizens of less than ten years standing as citizens, soldiers and sailors on active service and persons who have not yet performed their military service, bankrupts, and certain offenders against the election laws. Moreover, certain administrative officials are ineligible in the communities in which they are stationed, though eligible elsewhere. So far as what is called "incompatibility" is concerned, a person may not at the same time be a member of Parliament and hold another position. He must choose one or the other. Such positions include that of membership in the other Chamber, positions as officials of commercial organizations subsidized by the government or bound to it through contract to furnish it with supplies, and most governmental offices. In the last respect, Ministers and Under-Secretaries of State are important exceptions. The principle of this "cumulation" is a basic aspect of the parliamentary system, and it has been so recognized throughout the Third

Republic. A provision by which members of Parliament who are appointed to the ministry are required to seek re-election, an arrangement which at one time existed in England, was in France expressly excluded in 1875. Members of Parliament, it may be noted, may also be members of local assemblies.

Re-eligibility. Members of Parliament are re-eligible immediately and indefinitely.

Parliamentary Elections

Constituencies. In principle, the constituency for Senate elections is the Department, for elections to the Chamber of Deputies the Arrondissement. In the case of the Senate, the constituency is normally a multiple-member constituency, the 314 members being arbitrarily distributed among the Departments. The distribution is based on no discernible principle. In a few exceptional instances, a Department is entitled to only one Senator; and in these cases, as well as in the event of an election to fill one vacancy, the Department becomes a single-member constituency. For the Chamber of Deputies, the single-member constituencies are far from containing equal populations. The distribution of Deputies is determined by an annex attached to the Act of Parliament of 1927, in which a few minor amendments have since been made. The general principle is that each Arrondissement is entitled to one Deputy, except where its population exceeds 100,000, in which case it is allotted an additional Deputy for every 100,000 or fraction thereof. However, in the last respect, some ten exceptions have been made by allocating only one Deputy to constituencies of more than 100,000. In the result, the extremes of population run from approximately 25,000 —twenty constituencies contain less than 40,000 inhabitants— to 145,000.

Electoral Reform. Electoral reform has been, and is, an issue of much potential and actual importance in the internal politics of France. Even if the constituencies were absolutely equal, the well-known arithmetical fact that a single-member constituency system can, and frequently does, result in various anomalous discrepancies between the votes cast for a given political party and the representation which that party receives in the Chamber would be sufficient to keep alive interest in change. A multiple-member constituency system merely aggravates the possibility of disproportion, though increase alone in the size of a constituency can be, and is, argued to have real advantages. In France, Pro-

portional Representation has considerable respectable support. In fact, the system, in an imperfect form, was employed for the general elections of 1919 and 1924. During the Third Republic, therefore, three electoral systems have been in use. From 1876 to 1885, the single-member constituency prevailed; from 1885 to 1889, the general ticket system was employed; from 1889 to 1919, the single-member constituency was again in use; from 1919 to 1927, a modified system of Proportional Representation was attempted; and since 1927, the system has again been that of the single-member constituency. Many theoretical arguments can be, and have been, advanced in favor of each of the three systems. Thus, in general, Proportional Representation is argued to reflect correctly prevailing opinion in the country; the general ticket system is held to result in a broader point of view on the part of voters and representatives; whereas the single-member constituency system, it is contended, makes it possible for the voter to have more intimate knowledge of the candidates among whom he has to choose. However, in reality, considerations of practical politics are in a large measure the determining factors. Thus, in France, a matter of the highest importance is the fact that possession of the Ministry of the Interior gives a solid advantage to the government of the day. By the same token, those in power tend to favor the single-member constituency system. The more strongly entrenched they are, the more opportunity they have, under the centralized administrative system that prevails in France, to place agents favorable to themselves in strategic positions and to bring pressure on such agents to exert the desired influence. In spite of legal provisions aimed at governmental pressure, such as prohibitions on the distribution by government officials of ballots, circulars, and electoral programs and on the use of white paper or paper adorned with the national colors that might suggest official support, there prevails under the Third Republic a mild form of the "official candidacy" that was employed with consummate skill and success by Napoleon III.[1] The Monarchist majority of the National Assembly of 1871, with the experience of the Second Empire in mind, naturally supported in 1875 the single-member constituency system rather than the system by which the Assembly had itself been elected; [2] and the Republican opposition equally naturally attacked the system favored by the Monarchists. The Republicans, when they secured control of the constitutional system, seem not fully to have real-

[1] Cf. p. 66, *supra.*

[2] Cf. p. 80, *supra.*

ized at first how a system that had been used against them could be used by them. At all events, they established the general ticket system in 1885.[1] The eloquent Gambetta, it is true, employed arguments pitched on a plane of high principle; but, in any case, practical considerations dictated abandonment of the system. It was employed by the reactionary supporters of the ambitious and momentarily popular General Boulanger, in order to effect a kind of plebiscite for him, by placing his name before the voters in every large constituency in which a vacancy occurred.[2] The agitation resulted in a quick change back to the single-member constituency system. Inasmuch as power has tended in general to gravitate towards the Left, the principal element of which has been the party of liberal tendencies known as the Radical Party,[3] the single-member constituency system has become in a way a part of the Party's tradition, just as it has come to regard the Ministry of the Interior as in some sense its special possession. Manifest considerations of an analogous kind explain substitution of the Proportional Representation system in 1919, at the time of the reaction brought about by the World War. A sweeping victory of the Left in 1924 ensured the re-establishment of the single-member constituency system.

The Senatorial Electoral College. Members of the Senate are indirectly elected. Their electorate in each Department is an electoral college. The composition of such a college is slightly complex, several elements being included. In the first place, it includes all Deputies who represent constituencies in the Department. In the second place, it includes the members of the General Council of the Department and the members of the Councils of such Arrondissements as are contained in the Department.[4] These three elements have in common the characteristic of being themselves directly elected by the voters. Their vote for a Senator is, therefore, only two degrees removed from the people. Finally, the most numerous element of the college consists of delegates of the Councils of the Communes.[5] Being themselves chosen by Councils elected by universal suffrage, these delegates cast votes removed by three degrees from the voters. A provision of the Constitutional Law of February 24, 1875 originally stipulated that each Commune Council should choose one delegate. This arrangement caused Gambetta, in seeking Republican support

[1] Cf. p. 238, *infra.*
[2] Cf. p. 242, *infra.*
[3] Cf. pp. 264-266, *infra.*
[4] Cf. p. 206, *infra.*
[5] Cf. *ibid.*

for a second Chamber, to refer to the Senate as the "Great Council of the Communes of France." In 1884, deconstitutionalization and subsequent legislation [1] resulted in an arrangement whereby the Councils of larger Communes elect more than one delegate, the number ranging from two to twenty-four. However, the variation is far from being proportional; and this, together with the fact that an overwhelming majority of the Communes are small, results in great discrimination against the large cities. The electoral college meets and votes at the capital city of the Department, under the presidency of the President of a court of the regular judiciary located in the city.

The Electorate for the Chamber of Deputies. The Chamber of Deputies is said to be elected by "universal manhood suffrage." The electorate is composed of males who are registered as possessing the requisite legal qualifications. These qualifications are the same, incidentally, for elections of local Councils and of the Chamber of Deputies. In other words, there is only one voting list. This is prepared in each Commune, and is revised annually. Normally, qualified persons need take no initiative in order to be included on the list; but they are entitled to make formal claims and objections, and detailed arrangements for hearings and appeals exist. The basic qualifications are citizenship, age, and connection with the Commune. A voter must be a French citizen, twenty-one years of age. According to law, he may establish the necessary connection with the Commune through a continuous residence of six months, through domicile, through residence required by the holding of a government position, and through liability for payment of direct taxes. In these conditions, a name may manifestly find its way to more than one list; but the law prevents seeking or exercising in more than one Commune the privilege of voting. From the negative point of view, certain persons, though possessing the basic qualifications and even appearing on the voting lists, are disqualified. They include soldiers and sailors on active service, persons who have entered bankruptcy within three years, persons confined in insane asylums or declared judicially to be mentally incompetent, and persons convicted of certain crimes.

Woman Suffrage. France continues for the time being to have a place on the relatively short list of countries in which women are not permitted to vote. However, woman suffrage has strong support; and it will doubtless become an accomplished

[1] Cf. p. 102, *supra.*

fact in the course of not many years. Interestingly enough, though the argument that "women's place is in the home" is at times employed in France, conservative circles furnish much of the strongest support for votes for women. As in the case of so many things in French politics, religion is a consideration of paramount importance.[1] Influence of the priests with women is greatly feared in important non-conservative provincial circles. The Catholic Church strongly advocates woman suffrage. Industrial laboring classes, accustomed to women working on the same plane as men, likewise support it. This combination has succeeded in securing acceptance of the principle by the Chamber of Deputies on several occasions; but the Senate, with its large anticlerical elements, has obstinately refused to agree.

Family Voting. If the suffrage should be extended to women in France, adults would vote on as wide a scale as the logic of political democracy can well demand. The only other possible basic extension would be to grant the vote to children. Suggestion of precisely such extension, shocking as it may at first sound, has actually been strongly advocated in France. The system proposed is what is known as Family Voting. In general, the head of the family would cast as many votes as there are dependent members of the family. The basic argument made in favor of the system is that only a representative body elected under it can be expected to possess sound fundamental social views. Though support for Family Voting is derived from all parties, the system seems not likely to be adopted. Among other considerations, plural voting is contrary to democratic tradition.

Polling Dates. French elections, national and local, are in practice regularly held on Sunday. The simple consideration involved is that in this way workers are given opportunity to vote with a minimum disarrangement of daily life. The date at which elections to the Senate and Chamber of Deputies are held is determined, within the limits of provisions of Acts of Parliament, by executive order. Thus, a provision of an Act of 1929 determines that Senate elections shall be held in the second half of October. An executive decreé sets the precise day for the election within the legal period; and this determination must be made at least six weeks before the date of the election. The time between issuance of the executive decree and the date of the election is known as the "electoral period." Similarly, regular elections to the Chamber of Deputies are required by law to be

[1] Cf. p. 229, *infra.*

held within sixty days preceding the expiration of the term of the Chamber. The executive decree setting the exact day must be issued at least twenty days before the election. The electoral period thus may vary between twenty and sixty days. In practice, the usual period is about six weeks. The elections normally take place in May.

Inconclusive Elections. Multiplicity of candidates for French elections is the general rule. For the elections of 1936, there were on the average nearly eight candidates to each constituency. This is connected with the well-known facts that France is a country of numerous political parties and that a great part of such political organization as exists is loose and informal.[1] However, in practice, the results are not so bad as might be imagined. The explanation is that precaution is taken to afford especial opportunity for a majority to concentrate on one candidate. Thus, in Senate elections, three ballots in the electoral college are possible. "No one," runs the law regulating the matter, "shall be elected Senator on one of the first two ballots unless he shall have received a majority of the votes cast and a number of votes equal to one-fourth of the qualified electors. On the third ballot, a plurality shall suffice." All balloting that may be required takes place on the same day. In connection with the Chamber of Deputies, two ballots in any constituency are possible. The pertinent legal provisions are as follows:

> No one shall be elected on the first ballot unless he shall have received a majority of the votes cast and a number of votes equal to one-fourth of the qualified voters.
>
> On the second ballot a plurality shall suffice.
>
> The second ballot shall take place on the Sunday following the day on which the results of the first ballot shall be proclaimed.

Selection of Candidates. The fact that only a simple declaration of candidacy is required in order to contest a seat in the Chamber of Deputies, even this requirement being dispensed with in the Senate, is connected both as cause and effect with the appearance of large numbers of candidates in elections. However, even independent candidates, who are naturally more numerous than they would be in other conditions, cannot have much hope of success without a group of supporters. In other words, even an independent has his "committee." Whether the candidate chooses the supporters or the supporters choose the candidate depends on circumstances. In general, where the sup-

[1] Cf. pp. 261-272, *infra.*

porters tend to be strongly organized, they are likely to be a unit in the organization of a political party; and, by the same token, they are likely to choose their candidate. Such choice is the phenomenon connected with French elections that corresponds most closely to *nomination,* as practiced in the United States. However, in France, there is nothing very similar to American primary elections and elaborate convention procedure. The "investiture" by the French political party is simpler and more informal. There may be a kind of convention, constituted on a representative basis; or a local committee may make the choice. Approval by the national organization gives formal and official party validity to the choice.

Electoral Campaigns. As the time for election approaches, popular interest is aroused in greater or less degree. The candidate and his supporters make whatever appeal they can to the electors. Most of the methods employed in other democratic countries find some use in France. In this respect, elections to the Chamber of Deputies are, from the nature of the case, more typical than Senate elections. Appeal by mail to the individual voters is, of course, a basic and elementary procedure. Statutory provisions facilitate for declared candidates the printing at cost of sample ballots, election circulars, and the like; and such material of this kind as can be placed in one envelope is authorized to be sent free of charge in the mails once by each candidate. Again, posters employed by candidates are relieved of the stamp-tax ordinarily imposed on this means of publicity. However, such posters must be placed on boards especially erected for the purpose in each Commune. Legal provisions determine the number of boards in proportion to the number of qualified voters, and stipulate for an equal amount of space on the boards for each candidate. Meetings are organized on a large scale, and speeches are made in great numbers. The meetings are, in principle, open to the public. However, sometimes, a party card must be presented before entrance can be gained, in which case the object is presumably that of keeping up the spirits of supporters. Members of the Government and other orators of national reputation, some of whom may themselves be candidates, make speeches in various parts of the country in support of political friends. Less formal discussion is particularly characteristic of French politics. Cafés, it need hardly be said, are centers of political activity; and the Café du Commerce in provincial communities has become proverbial in this respect. Theoretically, issue is joined on

national questions, and good party candidates conduct their campaigns on the party program; but, in all cases, personalities and local interests are likely to play no little part. The newspapers are unusually active, campaigning not being confined to party and other political organs. Broadcasting was employed for the first time on a wide scale in 1936. The government stations are required by law to distribute on a fair basis time for campaign addresses. No considerable complaint is heard of corrupt practices. The use of money has in general given rise to no special problems,—in any event, campaign funds are not regulated by law.

Disputed Elections. A provision of the Constitutional Law of July 16, 1875, in terms reminiscent of those of the Constitution of the United States, stipulates that "each Chamber shall be judge of the qualifications of its members and of the regularity of their election." Disputed elections are relatively rare. As in America, these disputes tend to be decided on political grounds. Scholarly opinion holds that they ought to be determined in the courts of law.

Status of Members of Parliament

Independence. Individual members of the Chambers are in several ways ensured of a certain degree of independence. In the first place, with a view to establishing some economic security for members, payment is arranged. The Constitution is silent on this subject; but organic laws passed in 1875 established the principle of payment. Members at present receive a salary of 60,000 francs (c. $1700) per year, which is tax exempt. They also have the benefit of other advantages, including a contributory pension system. Concerning the traditional privileges of members, familiar to students of government, the Constitution contains the following provisions:

> No member of either Chamber may be proceeded against or held liable because of opinions or votes expressed by him in the exercise of his functions.
>
> No member of either Chamber, unless with the authorization of the Chamber of which he is a member,[1] may, during the course of a session, be proceeded against or arrested for a felony or a misdemeanor, except in case of *flagrante delicto*. The detention or prosecution of a member of either Chamber shall be suspended during the session and, if the Chamber shall require it, for its whole duration.

[1] This provision came to public notice in connection with prosecution of Communist Deputies at the outbreak of the War of 1939. Cf. p. 262, *infra*.

These provisions have very infrequent application in practice; but they are potentially important bulwarks against abuse of power.

2. THE ORGANIZATION OF PARLIAMENT

Preparation for Work

Sessions. When the composition of the Chambers has been determined, Parliament is in a position to meet, to arrange its organization, and to proceed to business. The Chambers convene and remain in session in accordance with certain simple legal provisions. As has been seen, the President of the Republic possesses power, as defined by constitutional stipulations, to summon Parliament in special session, to adjourn it, to prorogue it, and to dissolve the Chamber of Deputies. So far as the meeting of Parliament is concerned, the President is required to call a special session if requested to do so by a majority of the members of each Chamber; and a primary consideration is the fact that the opening and duration of an annual regular session are determined not by executive decision but by the Constitution itself.[1] Thus, the first article of the Constitutional Law of July 16, 1875 is worded in part as follows:

> The Senate and Chamber of Deputies shall convene every year on the second Tuesday in January unless they shall have been previously convened by the President of the Republic. The two Chambers must be convened in session for at least five months each year. The session of one shall begin and end at the same time as that of the other.

In practice, Parliament regularly meets for its ordinary session on the second Tuesday in January; and its session usually comes to an end just before the national holiday, July 14. Moreover, a special session has become established by regular practice. Such a session is, because of prevailing budgetary procedure, called in the autumn; and it is prorogued just before the New Year.

Rules. The Constitutional Law of July 16, 1875, in a provision dealing with the matter of publicity of the sittings of Parliament, stipulates that a secret sitting may be held in either Chamber if requested by a number of members to be "determined by the règlement." The word *règlement,* as here used, designates the set of written rules possessed by each Chamber. Use of

[1] In so far as constitutional stipulations possess real force, this fact is a safeguard which, among other things, renders the decree power in France different from that existing in the totalitarian states. Cf. p. 175, *infra.*

the singular number indicates that the rules are regarded as forming, so to say, a miniature code. Mention of the word in the Constitution is regularly said to be the constitutional basis in France for the power possessed by each Chamber to formulate its rules. However, the view is well established that the Chambers would possess this power, even if the Constitution were silent on the subject. Since no legislative body can get on without rules, the importance of rules may be taken for granted. Indeed, it would be difficult, if it is not impossible, to exaggerate the importance and influence of what is frequently called the "internal law" of the Chambers. Each of the Chambers adopted a set of rules in 1876. The rules of the Senate adopted at that time remain at the present day the interior legal code of that body. However, needless to say, they have in the course of more than sixty years undergone a considerable amount of modification. In the Chamber of Deputies, the règlement adopted in 1876 had, by 1915, been so much altered that the Chamber decided to replace it with a second set of rules. In the last quarter of a century, the second code of the Chamber has likewise been subjected to no little change.

The Bureau. At the beginning of a regular session of Parliament, each of the Chambers elects its officers. This action is taken in virtue of a provision of the Constitutional Law of July 16, 1875, which is worded as follows:

> The bureau of each of the two Chambers shall be chosen each year for the duration of the session and for every special session that shall take place before the regular session of the following year.

The word *bureau*,[1] as used in this provision, refers to the body of officers. Its composition is determined in each Chamber by the rules. At present, each Chamber has (1) a President, whose position is in principle that of the presiding officer of any deliberative assembly, (2) several Vice-Presidents, who on occasion act as substitute for the President, (3) a number of Secretaries, whose positions are of no great importance, since, instead of performing secretarial functions, they merely supervise functionaries who do the actual work, and (4) three officials in each Chamber known as Questors, who are in charge of such matters as the order, cleanliness, comfort, and conveniences of the buildings in which the Chambers are housed. At the opening of a session, before

[1] This use is to be distinguished both from that which designates the basic unit of administrative organization (p. 130, *supra*) and from that which designates a section of a legislative assembly (p. 153, *infra*).

the annual election of officers, a provisional group of officers known as the *bureau d'âge,* the oldest member acting temporarily as President and a number of the youngest members as secretaries, serves, in accordance with the règlement, in each Chamber. When a new Chamber of Deputies has been elected, the provisional officers do not proceed with the choice of the regular officers until the credentials of a majority of the members-elect have been verified. In all cases, the provisional President makes a speech before relinquishing the chair to the President-elect.

Presiding Officers. The presiding officers of the French Chambers occupy a position somewhere between the English Speaker and his American counterpart. The French President is, in theory, an impartial arbiter of the English type; but, in practice, he is somewhat more of a party man than the Speaker of the House of Commons, and his authority is less great. There is, it is true, a tendency not only for the President of the Senate but even for the President of the Chamber of Deputies to be re-elected in spite of political changes; and several presidents have served for a considerable period. However, tenure is by no means so certain as in England. The presidents of the Senate and of the Chamber rank high on ceremonial occasions, coming next to the President of the Republic. They are well lodged; and they receive, in addition to the salary of a member of Parliament, relatively generous salaries and allowances.

Working Organs in the Chambers

Smaller Bodies within the Larger. The French Chambers, like all relatively large deliberative bodies, find it convenient, and indeed imperative, to make use of certain smaller organs consisting of a restricted number of the whole body of members. Hence, these smaller bodies are an important element in the organization of the Chambers. More particularly, there are (1) bureaus, (2) groups, and (3) committees.

(1) Bureaus. The bureaus, in the sense of the word here involved, are sections of the two Chambers, somewhat like sections of a large American college course. There are 9 of these bureaus in the Senate and 11 in the Chamber of Deputies. They are established by lot, theoretically each month. However, their functions have become very restricted; and the lots are not drawn unless there is occasion for the bureaus to meet. Until pressure of business caused fundamental simplification of French parliamentary procedure, legislative measures were at one stage

regularly discussed simultaneously in the bureaus of a Chamber, these sections, because of their smaller size, offering a better opportunity than plenary sittings of the Chambers for fruitful debate. At present, the principal function of the bureaus is that of the "verification of powers." After an election, the credentials of the members-elect are distributed alphabetically by Departments among the bureaus, which, having examined the election returns through small committees of not less than five members chosen by lot, report to the Chamber. Aside from this practice, the bureaus are little more than election divisions, being exceptionally employed, as will be seen, to form committees, through choice of one or more members in each bureau.

(2) Groups. In each of the Chambers, members who are affiliated with one another through similar political views form in principle what is known as a *group*.[1] This kind of group should, for purposes of distinction, be called a *political* group. The best examples are the groups that are, like an American caucus, composed of those members of a Chamber who belong to a given national political party. However, by no means all of the political groups correspond to political parties, a well-known characteristic feature of French Parliamentary life being the existence of numerous political groups within the Chambers. At present, these groups number six in the Senate and fifteen in the Chamber of Deputies. They are *official,* in the sense that they are recognized by the règlement in each Chamber through provisions requiring the groups to prepare lists of their members, giving to the groups a principal part in the choice of committees, imposing functions on the presidents of the groups, and so on. Though a member of a Chamber is naturally not compelled to belong to a political group, no member may belong to more than one of them. In this last respect, and in several others, the political groups are to be distinguished from associations of members known as *study* groups. The latter are not official, and a member may belong to as many of them as he sees fit. Such groups are associations of members within the Chambers that correspond in a general way with groups of lobbyists in the United States. They are groups that serve as a nucleus in the forces that defend particular interests of one kind or another. Thus, the most important study groups in the Chamber of Deputies are the Group for Peasant Defense and the Winegrower Group. Among the large number of other groups, examples range from the National

[1] Cf. p. 222, p. 260, *infra.*

Education Group and the Taxpayers' Defense Group, through the Traveling Salesman Group, to groups like the Numerous Families Group and the Moving Picture Group. It may easily be imagined that members of Parliament, especially new members, readily sign their names, when the lists are circulated, as adherents of many of these groups. It is said that the lists shrink somewhat when the time for the collection of dues arrives. The proliferation of groups in the French Chambers has given rise to the term "groupitis" as a description of one of the maladies from which Parliament is alleged by its critics to suffer; but the warning may be repeated that a careful distinction ought to be made between political groups and study groups. The existence of several political groups in France is a consideration of the greatest importance and, hence, a phenomenon that is the subject of much comment; but the situation ought not to be exaggerated through confusion growing out of terminology. According to a well established custom, the political groups take on the floor of a Chamber positions that are determined by the political complexion of their views. The section to the left of the President is occupied by the more "advanced" groups. The members of these groups, adhering to various shades of communism, socialism, and liberalism, constitute the Left. At present, the position at the extreme left is held by the group of the Communist Party.[1] The tendency has been for a new group to appear at the far left, thus forcing towards the right the group formerly occupying the extreme left position. Similarly, the Right consists of groups with conservative or reactionary tendencies. Left and Right come together at the Center. Groups of the Center frequently hold, through a balance of power, a position that is of an importance out of proportion to their size.

(3) *Committees.* The committee system of the French Chambers possesses an importance in French government that can scarcely be exaggerated. This importance, in the case of organisms that in general prepare the work that Parliament is to do, will naturally be more evident when the functions of Parliament are examined. As an element in the organization of Parliament, the character of committees, their number, size, method of choice, and the like are determined in each Chamber by provisions of the règlement. Of the committees, the most important are the Permanent Grand Standing Committees. There are at present 11 of

[1] Cf. p. 261, *infra.* The Communist group was practically annihilated at the outbreak of the War of 1939.

them in the Senate and 20 in the Chamber of Deputies. Though called *permanent,* they are chosen annually. They are *standing* committees in the sense that they are, unlike small *special* committees of earlier French practice which in principle dealt each with one question, set up and continued in existence for the purpose of dealing with any matters that are referred to them as falling within their special sphere of competence. This sphere of competence is indicated in each case by the name of the committee. Simple examples include committees on finance, on foreign affairs, on agriculture, on the army, on education, on the navy, and so on. Finally, the committees are called *grand* because they differ in size from the typical *special* committees of the earlier French system. These special committees, which in exceptional circumstances may be and sometimes are set up at the present day, regularly consisted of one member from each bureau, that is to say, of nine members in the Senate and of eleven in the Chamber of Deputies; whereas the grand committees now consist of 36 members in the Senate and 44 in the Chamber of Deputies, these multiples of nine and eleven respectively reflecting the fact that the grand committees, though they are now elected by another method, were originally chosen through the selection of four members in each bureau. In 1910 in the Chamber of Deputies and in 1921 in the Senate, the present system was established of election of the grand committees by Proportional Representation in the Chambers. The method in use in the Senate and that in the Chamber of Deputies are the same but for minor differences of detail. A few days—six in the Senate and five in the Chamber—before the day fixed for the election of committee members, the political groups draw up, as has been said, lists of their members. The lists are submitted to the officers of the Chambers and published. Determination may then be made of the fraction of the membership of each committee to which each group is entitled, a group choosing the same proportion of the members of each committee as the membership of the group bears to the size of the Chamber. In the Chamber of Deputies, for example, a group of seventy-five members is entitled to 75/618 of 44. The groups choose from their membership the members to which they are entitled on each committee. The names are submitted to the officers of the Chambers, who may then compile the list of members for the several committees. The lists are published; and if within three days objection is not made through petitions signed by a certain number of members—

twenty in the Senate, fifty in the Chamber—the lists are considered to have been approved by the Chambers. In case of objection, the Chambers proceed to a vote.

3. THE FUNCTIONS OF PARLIAMENT

The Making of Law

Legislation and Related Functions. French theory accords with views prevailing generally in modern democratic countries in accepting a three-fold classification of parliamentary functions. These functions are in reality so closely interrelated that they are in a sense different aspects of one function; but, in any event, convenience attaches to their separate consideration. Parliament makes laws; it administers public finance; and it controls the executive.

Parliamentary Procedure. French legislative procedure is determined in its technical aspects by the rules of the Chambers. In its outlines, this procedure is at the present time relatively simple.

Bills and Their Introduction. A proposed legislative measure is introduced into one or the other Chamber either by a member of the Cabinet in the name of the President of the Republic or by a private member. Between these two cases there is no important difference. Cabinet measures have no priority comparable to that possessed by Government bills in England. In France, what is known as unlimited individual initiative exists, that is to say, every member may introduce as many measures as he sees fit. In this flood, Cabinet bills and private members' bills for the most part take their chances together. The distinction is largely one of nomenclature. Cabinet measures are called *projects* of law, private members' measures *propositions* of law. Any advantage that the former possess over the latter is one inherent in the position of the Ministry rather than something formally recognized by rule. Both kinds of measure must be reduced to the same form, must be composed of one or more articles, and must be preceded by a short explanation of the proposal. They are placed before the President of the Chamber, who theoretically informs the assembly of the fact of introduction, and in fact orders the measures to be printed and distributed.

Committee Stage. A legislative measure that has been introduced into one of the Chambers is, according to the règlement, referred by the President of the Chamber, unless the Chamber decide otherwise, to the grand standing committee into the sphere of which the measure falls. The general practice is for the committee to place the measure in the charge of a member who becomes known as the reporter of the measure. This reporter gives to the measure the most careful consideration he can, whereupon he brings before the committee for examination and discussion a provisional measure that he has prepared. This may be in substantially the same form in which the measure was introduced; but more frequently the original measure has undergone no little alteration. Whichever may be the case, the committee undertakes, in the course of its examination, to discuss in detail the conclusions contained in the provisional measure of the reporter. Committee members who feel some competence in the question under discussion present their views. This means primarily, though not exclusively, the president of the committee, who is usually a man of considerable experience, and the reporter, who has acquired knowledge through his special study. Moreover, witnesses are frequently heard. The author of the measure under discussion, if he is not a member of the committee, is naturally afforded a special hearing, being given by the rules, in fact, the right to attend meetings of the committee. Members of the executive are, through mutual desire, witnesses. The Minister wishes to have his position understood by the committee, and the committee desires to know the views of the executive. Finally, the committee decides on the measure it proposes to sponsor, the reporter being authorized to prepare the report. This offers to ambitious members an opportunity to impress the Chamber and the public. For example, Briand, as a young man, first demonstrated his undoubted ability on an occasion when he served as reporter of a measure effecting the separation of Church and State.[1]

Reports and Order of the Day. A reporter who has completed his report and has been authorized by the committee to bring it before the Chamber presents it to the President, who orders it printed and distributed. Then, for the report to come before the Chamber for discussion, two conditions need to be realized. In the first place, the report must be placed on the program of proposed business, known as "the order of the day";

[1] Cf. p. 252, *infra.*

and, in the second place, it must have such a position on the order of the day that it is reached within the time available. The order of the day is prepared in the Chamber of Deputies by what is known as the Conference of Presidents. This Conference, according to the rules, is composed of the President and Vice-Presidents of the Chamber, of presidents of the grand committees, and of the presidents, or other representatives, of the several political groups. The Cabinet may be heard if it so desires. The Conference meets once a week in order to discuss the general legislative situation in the Chamber and to prepare the order of the day for the ensuing week. The order of the day is submitted to the Chamber for approval, after which it is printed and posted. Thereupon, it may be altered only at the request of the Cabinet or on the petition of fifty members. In the Senate, the order of the day is informally proposed by the President at the end of one sitting for the next.

Debate. When a measure comes before a Chamber for discussion, it must, in order to be passed, follow certain steps of a simple procedure. The steps are these: (1) general discussion, (2) a vote to pass to a reading of the articles, (3) a detailed examination and voting of the several articles, at which time any amendments that have been suggested are considered, and (4) vote on the measure as a whole. As Professor Joseph-Barthélemy has well said,[1] "In principle, three groups of actors carry on parliamentary debate,—the Government, the committees, and the mass of Deputies." The same authority suggests that the situation is symbolized by the physical arrangement of the Chamber, where, in front of the seats on which the great body of the members sit, special benches, marked in gold letters on red cloth, are reserved respectively for the Cabinet and the committees. So far as a committee in charge of a measure is concerned, the president and reporter play a principal part in debate. This is true even of a *project* of law; for the committee measure, not that originally introduced by the Cabinet, is the basis of discussion in the Chamber. Members of the Chamber who desire to speak hand in their names to the President, who, in general, attempts to arrange that speakers for and against a measure shall be heard alternately. Members of the executive and the president and reporter of the committee may speak whenever they request it, except that any one of them may be followed by an ordinary member.

[1] *Op. cit.*, p. 543.

Agreement of the Chambers. When a measure has been passed in one Chamber it is sent to the other, where it undergoes substantially the same treatment. What are called "conference committees" in the United States are employed only exceptionally in France. Disagreements between the Chambers are ironed out by informal procedure, members of the Cabinet and other interested members serving as intermediaries.

The Administering of Public Finance

Constitutional Basis. In France the fundamental democratic principle is well established which demands that ultimate control of the public purse shall rest with the legislative branch of government. This principle was thoroughly understood in 1875. Indeed, being a basic assumption, it was not formulated in words in the Constitution. In the Constitutional Laws, the only mention of public finance is to be found in a provision requiring that money measures be voted in the Chamber of Deputies before being sent to the Senate and in a provision requiring approval by the Chambers of treaties that involve public money. Both provisions, it is clear, imply legislative control of public finance.

The Role of the Executive. The relationship between the legislature and the executive is particularly close in the matter of public finance. For example, in France, the initiative of the executive in respect of finance is much more far reaching than in respect of ordinary legislation. Moreover, execution of legislative decisions concerning finance is of peculiar importance in connection with the very operation of the governmental system. Hence, the control of Parliament over the executive is in this respect particularly exacting. Finally, Parliament has made careful arrangements for an audit of the accounts of the executive.

The Budget. France naturally employs a budget. In other words, future expenses of government are estimated, and ways and means for securing the necessary money are suggested, according to a definite and careful plan. Consideration and approval of the budget constitute the most important single function performed by the Chambers. In dealing with the annual budget and with other financial measures, the Chambers follow in its general outlines the procedure employed in the passage of ordinary legislation.

Financial Preparations. The annual budget measure is introduced into the Chamber of Deputies by the Minister of Fi-

nance on behalf of the President of the Republic. This great measure is, therefore, a *project,* rather than a *proposition,* of law. Technically, it does not differ from any other government measure. However, the budget project is not only of a special nature and of paramount importance; it consists of several bulky volumes of many hundreds of pages. It is prepared with much care and difficulty by the Minister of Finance. He, some time before the beginning of the fiscal year, requests from the several spending departments estimates of their expenses for that fiscal year. The Minister of Finance directs the preparation of these estimates for his own department. The estimates in each department are required by law to be submitted to a controller of expenditure appointed in the department by the Minister of Finance. These controllers formulate their opinions concerning the estimates; and estimates and opinions are communicated to the Ministry of Finance. An initial part of the great task of the Minister is that of co-ordinating the various estimates of expenditure. In this respect, authorities on public finance are in agreement that the Minister is not in a position to exercise all the authority desirable. In turn, the Ministry of Finance makes a reckoning of all anticipated revenue, and normally suggests ways and means of raising additional money. It is, of course, another important aspect of the Minister's task to balance the budget, in other words, to establish an equilibrium between proposed expenditure and anticipated income. Controversies that arise are in the last analysis decided by the Cabinet. In the end, the budget measure is put in its final form. The Minister writes certain introductory observations, reviewing the general financial situation of the country and explaining and defending the budget proposals.

Financial Initiative. In France, there is, at the time of the introduction of the budget, nothing that resembles the "budget speech" of the English Chancellor of the Exchequer. Introduction of the French budget is a simple formality, like the introduction of any other measure. Then, once introduced, the budget is ordered by the president of the Chamber to be printed and distributed; and it is referred to the grand committee on finance. As a matter of fact, the budget proposals are frequently not completed before the end of the regular session. Consequently, the Minister of Finance introduces a dummy measure, this fiction regularizing subsequent consideration by the committee on finance of the several parts of the budget as they are furnished

to the committee by the Minister. As a result, the members of the finance committee are accustomed to meet during the hot summer days between the regular and special sessions, when other Deputies are enjoying vacations at the seashore or in the country.

The Finance Committee. The committee on finance is much the most powerful of all the grand committees. Though its primary task consists of dealing with the annual budget, more measures come before it than before any other committee. The simple but important explanation of this is that practically all proposed measures are related in some way, immediate or remote, to public finance; so that the committee on finance is usually called on either to study a measure itself and report on it or to formulate an opinion concerning its financial aspects. In practice, the committee is in large measure an aggregate of reporters. Since a reporter is forthwith named for each of the numerous measures coming before the committee, there is no lack of work for the individual members of the committee. So far as the budget is concerned, the estimates of expenditure are divided into parts, the estimates of the several administrative departments and services being distributed to special reporters. Moreover, a general reporter performs the function of reviewing the general financial situation, of dealing with the principles common to the several parts of the budget, and of directing public discussion. The reporters subject the several parts of the budget to careful consideration and vigorous criticism. They formulate their own proposals, and these form the basis of the committee hearings. Witnesses, particularly members of the executive, are summoned. The fact that substantial changes by the committee in the original budget proposals are not necessarily regarded by the Cabinet as an indication of lack of confidence in it gives to the committee a wide range of initiative. The proposals are practically certain to undergo a large amount of modification. The measure finally adopted for submission to the Chamber is considered to be not an executive measure but a committee measure. In reality, whatever the theory, the text is a combination of proposals emanating from the two sources. This text is contained in the various reports made in the name of the committee. The budget involves approximately thirty special reports, in addition to one or more general reports and to numerous supplementary reports. There is no pretense that these reports are confined to the estimates of expenditure and to revenue proposals. A general review is made of the army, agriculture, foreign affairs, the

navy, and so on. Questions of high policy are dealt with and freely criticized. This is, in turn, the basis of fundamental criticism brought by students of public finance against the French committee on finance and, in lesser degree, by students of government against the grand committees in general. There is a definite tendency towards encroachment on the proper sphere both of the executive and of Parliament as a whole, with serious consequences for leadership, responsibility, and stability. In other words, the operation of the parliamentary system is involved. The committee on finance has been characterized by many unpleasant names, such as "shipwreckers of ministries"; and the committees as a whole have been called "parliaments within Parliament" and various other similar things.

Provisional Twelfths. The budget regularly comes before the Chamber of Deputies at the special autumn session of Parliament. This session is convened by the executive when the committee on finance is ready with its reports; but the time at which the committee on finance is prepared to report is determined in considerable measure by delay on the part of the executive in submitting the budget proposals to the committee. In practice, the special session begins in the late autumn. Inasmuch as the fiscal year in France begins on January 1, only a few weeks are usually available for debate of the budget, if it is to be passed on time. The fact is that the Chamber rarely succeeds in voting the budget in good time. After that, examination and approval by the Senate and agreement between the Chambers are, of course, necessary. When the budget is not voted by the beginning of the fiscal year, exceptional grants on account, known as *provisional twelfths,* are authorized by Parliament.

Financial Debate. Debate of the budget in the Chamber, as in the case of ordinary bills, properly includes general discussion of the whole and detailed consideration of the separate parts. In practice, the general discussion is sometimes eliminated. However that may be, principal roles are played in debate by the Minister of Finance, the president and general reporter of the committee on finance, and, in discussion of particular parts of the budget, by the special reporters. The reporters, especially the general reporter, are likely to feel that they are at least the equals of the Minister, the result of the rivalry being friction and divided responsibility. The reporters have been called "heirs apparent" of the Minister. This situation, together with other aspects of keen interest displayed during the budget debate, is

a manifestation of the basic fact that, inasmuch as financial proposals inevitably involve matters of policy, discussion of what are in appearance details of finance regularly takes the form of criticism of governmental policy.

Amendment of Financial Measures. In connection with that part of the budget debate which is concerned with particular items, the matter of amendments is of great importance. France has not followed England in confining initiative in financial affairs to the Cabinet and thus limiting the legislature to proposals for reduction. An arrangement like the English arrangement has been much discussed in France; but, so far, reforms that have been made in connection with amendment procedure have not gone to the point that many students would like to see. In this respect, more than ordinary interest attaches to a proposal made by M. Doumergue in 1934 with a view to amendment of the Constitution.[1] The terms of the proposed amendment are as follows:

> Except on initiative of the Government, no proposal for expenditure shall be in order unless it shall have been preceded by a vote on the part of the Chamber of corresponding revenue.

M. Doumergue had previously announced in a broadcast that he proposed to introduce a provision establishing an absolute prohibition on private initiative. The form decided upon was, as may be clearly seen, a compromise. It does not greatly differ from existing provisions of the règlement. However, in reality, custom and habit are more important in such matters than formal legal provisions. Already, the committee on finance maintains the practice of refusing to report favorably any amendment to which the Cabinet is opposed. Further development towards establishment of the position the executive ought to have must await future reform.

Agreement between the Chambers. When the budget reaches the Senate, not much time is left for examination by the committee on finance and discussion by the Senate. However, this situation is to some extent ameliorated by the practice on the part of the Senate committee on finance of unofficially studying the budget proposals simultaneously with the Chamber of Deputies. The Senate does not hesitate, when it sees fit, to vote alterations in the Chamber budget proposals. In the absence of employment of conference committees, the obligation of secur-

[1] Cf. p. 137, *supra.*

ing agreement between the Chambers devolves primarily on the Minister of Finance.

Budgetary Proportions. The annual peacetime expenditure authorized by the French budget for government purposes recently passed 50,000 million francs (c. $1,400,000,000). As in other countries, there has been over a period of time a relatively steady increase in governmental outlay. At present, the international situation, resulting in strong emphasis on armaments, is, of course, causing money to be appropriated for war purposes that, in more fortunate circumstances, could contribute in a more positive and fruitful way to the general welfare. On the side of income, more than eighty per cent of public revenue is normally derived from taxation. The remainder comes from several sources, such as proceeds from government industries and monopolies and income from government property. Loans are employed from time to time, especially for capital outlay. So far as taxes are concerned, the French system is proverbially complicated. The number of taxes is almost literally countless. In general, indirect impositions exceed direct. The French are heavily taxed, and tax evasion is practiced on a wide scale.[1] Reform in the direction of simplification has made some progress, but much remains to be done.

Audit. The accounts of the national government are submitted for examination to two agencies. The first, a Committee on Approval of the Accounts of Ministers, is a body of complex *ex officio* composition. It is of little genuine importance. The real function of audit is performed by the Court of Accounts.[2] This Court is composed of competent experts who make a serious examination of the accounts. A report is made to the President of the Republic and to Parliament. On the basis of the findings of the Court, Parliament approves the accounts. However, the practical utility of this potential control is greatly lessened by the fact that final approval of the accounts by the Chambers normally takes place several years after the expenditure of the money involved.

The Controlling of the Executive

Information and Criticism. Ministerial responsibility, which is the characteristic feature of parliamentary government, has

[1] This is sometimes explained in France as a survival of the influence of the *ancien régime* and as evidence of a liberal instinct on the part of a Frenchman to regard, like his ancestors, the tax collector as a symbol of arbitrary absolutism.

[2] Cf. p. 192, *infra*.

been seen [1] to have as its obverse the control by Parliament over the political executive. In order to make this control effective, Parliament employs in its day-to-day proceedings various expedients for keeping itself informed concerning executive activities and for subjecting these activities to criticism. Of the several forms of control used by Parliament in France, some of the more characteristic are (1) Questions, (2) Investigations (*enquêtes*), and (3) Interpellations.

(1) Questions. Oral questions are of limited importance in France. Legislative rules establish their existence and regulate practice with respect to them. On two days in the week, Tuesday and Thursday, questions may be put at the end of a sitting to a member of the executive. Only two questions may be asked on each of the two days. The questioner is allotted fifteen minutes in which to "develop" his question. The executive official who has been questioned makes his reply, whereupon the questioner is given five additional minutes in which to comment on the answer. The matter is then closed. Much more extensive use is made of written questions. Such questions run to several thousand every year. A member writes out and hands in a short question, which is printed in the official account of the proceedings on a given day. The member of the executive to whom the question is addressed normally replies within a week. At its best, this system elicits official interpretations on difficult questions, particularly those connected with public finance; at its worst, it results in trivial questions prompted chiefly by desire on the part of the questioner to have his name appear in print.

(2) *Enquêtes.* Investigations undertaken by legislative assemblies are a familiar phenomenon in all countries. For the conduct of such investigations, a committee is the natural instrumentality. France is no exception in this respect. The matter is regulated partly by statute and partly by legislative rules. A committee is, in practice, directed to undertake an investigation either of a specific matter or of some general situation. The committee holds hearings; and it may, by special decision of a Chamber, be authorized to compel the attendance of witnesses and to hear them under oath. The committee normally makes a report of its findings, and the Chamber makes concerning it whatever decision it sees fit. These investigations can scarcely be called a success in France. As a rule, the findings are without importance or the

[1] Cf. pp. 123-126, *supra.*

hearings give rise to bitter partisan controversy. Not infrequently, both results eventuate.

(3) Interpellations. Interpellation is a more typically French and a more efficacious form of control than questions or investigations. As a matter of fact, interpellations are not in essence different from questions; but, in practice, they offer much wider opportunity for control. A member of Parliament is said to "interpellate" a Minister, that is to say, he demands from a Minister an explanation concerning some action or policy that concerns an executive department, or he seeks from the Prime Minister an explanation of general policy. Such a demand is handed in to the President of the Chamber, who, at the end of a sitting, informs the Chamber of the fact and raises the question of disposal of the matter. The member who desires to interpellate the Minister has five minutes in which to "develop" his interpellation. The Minister either agrees on a time for debate, or he in effect refuses a debate by demanding that the interpellation be taken in its regular order on a waiting list. In the latter case, its turn will never be reached. However, the Minister not infrequently develops at some length his reasons for proposing that the interpellation be taken in its regular order; so that, in the result, an abbreviated two-man debate, each speaking once, in reality grows out of the very refusal of a debate. Of course, if the Minister's suggestion that interpellation be taken in its regular order is not approved by the Chamber, refusal is equivalent to a vote of lack of confidence; and the Cabinet must resign. On the other hand, if the Minister accepts the interpellation and a date is agreed upon, the debate assumes considerable dimensions. In this case, the author of the interpellation has an hour in which to "develop" his proposal. Thereupon, a general debate ensues, the members speaking in the order in which their names are handed in to the President. The debate is brought to an end by a motion that the Chamber "pass to the order of the day." This motion, known by the curiously shortened expression "order of the day," is sometimes a simple motion to pass to the order of the day; but, more frequently, it is a "qualified order of the day," that is to say, the motion, by means of numerous variations of phraseology, expresses confidence or lack of confidence in the Cabinet. A simple unqualified motion is rarely accepted by the Cabinet, being a manifest acknowledgment of weakness. Normally, the Cabinet demands a vote of confidence. In practice, the situation is usually solved through indirection. Of the several orders of the day that

are certain to be before the Chamber, the Cabinet selects the one it prefers; and for that it demands "priority." Thus, issue between supporters and opponents of the Cabinet is joined on the question of priority. If the Cabinet's demand of priority is refused, the Cabinet falls. If priority is voted in accordance with the wishes of the Cabinet, the Cabinet is thereby shown to be victorious; and voting of the order of the day is a formality. In general, though interpellations employed in moderation serve a useful purpose, students of government are in agreement that the institution is one which easily lends itself to abuse.

Other Means of Control. Questions, investigations, and interpellations are direct forms of control. Of at least equal practical importance are the opportunities for demanding information and for expressing criticism that are afforded during committee activities and in the course of regular debates, especially during activities of the committee on finance and during debates on finance. At numerous points, disagreement between Parliament and the Cabinet or, in other words, lack of confidence on the part of Parliament in the Cabinet may be manifested through any failure of Parliament to approve the position of the Cabinet or through insistence by Parliament on a position of which the Cabinet disapproves. The situation in such instances is frequently made clear by the Cabinet's "putting the question of confidence." In the particular matter of financial debate, one of the most fundamental principles of government is involved, namely the principle that control over the executive is based fundamentally on power of the purse. More specifically, inasmuch as a program of expenditure is in reality a program of government expressed, so to say, in the language of money, Parliament, when it withholds its approval of a proposed expenditure, in effect disapproves an element in the policy of the executive. Control of spending is control of the spenders.

4. THE POWER OF PARLIAMENT

Bases of Authority

Parliament and Legal Authority. In strict theory, France is to be classed as a country possessed of a "rigid" constitution. The National Assembly alone possesses power to amend the Constitution. Therefore, according to the principles of analytical juris-

prudence, legal sovereignty resides in the National Assembly. To the potential accomplishment of this National Assembly there is no legal limitation, unless the view be accepted that the constitutional provision which stipulates that the republican form of government shall never be subject of amendment [1] contains such a limitation. In any event, the National Assembly possesses the *constituent* power. Parliament possesses merely *legislative* power. However, this distinction is of minor practical importance. Aside from the fact that the same members compose the National Assembly and Parliament and that only formal differences, like adjournment to Versailles and a joint sitting of the Chambers, distinguish the two bodies, the important point is that Parliament in its strict sense does not find in practice that provisions of the Constitution are serious limitations on its effective exercise of power. The important fact that the Constitution is short, that it is of limited scope, that its provisions establish the structure of central government without placing limits on governmental power, enables Parliament to enact without legal hindrance any statute which it considers calculated to promote the general welfare. The small likelihood that Parliament would ever desire to violate, or ever violate, the Constitution is simply related with the absence of judicial review of Acts of Parliament in France. There is no occasion to violate the Constitution and no occasion to raise the question of whether the Constitution has been violated. In a practical as distinguished from a technical sense, legal sovereignty rests in Parliament.[2]

Parliament and Moral Authority. Since the French Parliament is for practical purposes possessed of unlimited legal power, such restraint as it displays is, so to say, self-restraint. The limitations within which it seeks to promote the general welfare are set not by a law superior to the law made by Parliament but by that complexus of forces commonly denominated *public opinion.* In other words, only extra-legal forces protect "individual liberties" against Parliament. The body of the French people do not consider this an alarming situation. On the contrary, they regard it as being fundamentally democratic. They feel that the primary protection for the individual is to be found in an arrangement whereby laws are made by the representatives of the people, that is, by average men, after full and free discussion and wide publicity. In these conditions, a highly developed sense of moral responsibility is the best guaranty—and the same may be argued

[1] Cf. p. 101, *supra.*

[2] Cf. p. 104, *supra.*

to be true even of countries with bills of rights enshrined in a higher law interpreted by judges—against abuse of legislative power.

Parliamentary Omnipotence

Parliament and Cabinet Authority. The idea of the practical legal sovereignty of Parliament is so well established and understood in France that it is at all times tacitly assumed. While a legislative measure is pending, the issue is always the simple one of whether it ought or ought not to be law. The issue is not confused by any question of whether Parliament possesses the legal power to make the law in question. The question is, in a broad sense of the word, always a moral one. In other words, the question is whether the proposal is in the general interest; and public opinion is the final arbiter. Indeed, when the expression "omnipotence of Parliament" is employed in France, the reference is not to the fully accepted principle of legally unlimited power to make law, but rather to a practical situation. Parliamentary omnipotence refers to a tendency for Parliament in practice to reduce the executive to a position of subordination and dependency in a governmental system the ideal of which is accepted theoretically to be a nice balance between legislature and executive. Just as the tendency is in England for the equilibrium to be dislocated by too great strength of the Cabinet in proportion to that of the private member, so in France the tendency is for Parliament to be relatively too strong and the Cabinet relatively too weak. Various suggestions have been made in France of reform which would strengthen the executive; but such reinforcement, it should be noted, would not affect the principle of the ultimate and unlimited legal power of Parliament. The immediate exercise of this power would merely be practically restricted. However, in this respect, one important difficulty consists of the fact that a vicious circle tends to be established. Since the executive is weak, Parliament, in order to exercise its disproportionate practical power, organizes itself and otherwise consolidates its position in such a way as to maintain the executive in its subordinate position. A principal, though by no means sole, manifestation of this situation is to be seen in connection with the well-known phenomenon of ministerial instability.[1] With frequent changes of Cabinet, Parliament has itself assumed responsibility for continuity and stability. Making use particularly

[1] Cf. pp. 126-129, *supra*.

of its committees, it has formulated policies that have reflected the general wishes of the country; and it has translated these policies into a unified and uniform body of legislation.

Parliament and the World War of 1914-1918

Institutional Unpreparedness. Unusually interesting manifestations of the implications that are involved in the normal "omnipotence" of Parliament were to be observed in the course of the four years during which France was at war with the Central Powers. Before 1914, the general principle was accepted in France that in time of war almost complete civil power ought to be vested in the executive branch of government. This principle is based on the simple assumption that prosecution of hostilities in defense of national existence requires and justifies far reaching modification of normal institutions and practices. The sphere of governmental action ought, it is held, to be extended in favor of military interests, and the executive, as the organ of action in the State, ought, in civil concerns, to have an authority comparable to that of the military command in its sphere. In both respects, private interests must be subordinated to the national defense. Individual liberty becomes secondary, and popular control operating through parliamentary authority is restricted within relatively narrow limits. On the other hand, in France before 1914, regard for "planning" was not sufficiently great to secure the formulation of a governmental organization that would readily be adaptable to the exigencies of war. A few isolated suggestions along this line had, it is true, been made; but, aside from legal arrangements for the institution in parts of the country of a "state of siege," which has as a result the transference of certain normal civil power to the military authorities, nothing had been done. As a consequence, adaptations had to be made without benefit of prepared plan, as experience suggested need of change. In the result, practically all the forms of peacetime institutions and practice were maintained, and no small part of their substance.

Wartime Developments. Upon the outbreak of war, Parliament, which was absent on its usual summer vacation, was called together for what proved to be a short special session. Party differences were temporarily forgotten; the Chambers authorized the necessary appropriations; the executive received a grant of practically absolute power to carry on the war;[1] and the session

[1] Soon after the outbreak of the War of 1939, similar action was taken.

came to an end through executive decree. There followed a period of what was essentially executive dictatorship. However, after a few months, Parliament showed that it had no disposition to be entirely eliminated. Indeed, following the opening of the regular session at the beginning of 1915, the Chambers displayed a marked tendency to push matters to an extreme. They gradually extended their authority until they actually reached the point of proposing that Parliament should exercise direct control over the supply services and the armies in the field. Reaction from such extreme proposals was doubtless inevitable. In any event, a sudden show of strength by the executive prevented organization of control on the scale proposed. Nevertheless, the Chambers, acting through their grand committees,[1] maintained throughout the greater part of the war ceaseless activity in many directions, reaching even to the front.

Vitality of Democracy. Maintenance in France in time of war of the forms of regularly constituted democratic government and assertion by the representatives of the people of a considerable measure of their normal power are matters of the highest interest and importance. They are closely interrelated with genuine regard on the part of the French people for democracy and with real solicitude for fundamental personal liberty. Stubborn qualities display themselves with especial clarity in time of crisis; and prized possessions are guarded with particular care when they are in danger. Not even England and the United States were the equals of France in these respects from 1914 to 1918. "Among the great belligerent states, France was indeed that one which, in going through the crisis, remained most faithful to its traditions and to its constitutional principles." [2]

Territorial Authority

Parliament and Local Government. In the operation of French government, another aspect of the preponderant practical power of Parliament is worthy of note. France, as there will be occasion to see, is a highly centralized country.[3] Centralization involves, of course, the relationship between national government and local government. In formal logic, no connection exists

[1] The grand committees, on the occasion of the beginning of the War of 1939, immediately manifested intentions of concerning themselves actively with the situation.

[2] Pierre Renouvin, *Les Formes du gouvernement de guerre* (Paris and New Haven, 1925), p. 147.

[3] Cf. p. 203, *infra.*

between this relationship and the relationship of executive and Parliament in the national government; but, practically speaking, the relationship between national government and local government cannot but be influenced by the nature of the national government. As a matter of fact, the potential strength of the national executive is magnified through centralization, involving, as it does, administrative control over the minutest affairs in all corners of France; but Parliament, in its strength, is the more determined, by keeping the executive weak, to prevent it from reaping the advantage of its potential position. The argument can be made that a substantial measure of decentralization, with genuine devolution of power from the national government, would so lessen the potential strength of the executive as possibly to render Parliament willing to see the position of the executive reinforced in relation to Parliament. At least equally important would be the benefits that local life would experience. In this respect, a wide devolution of authority by the national government to existing localities, devolution to larger regions that might be created, or devolution on functional lines would not, it must be clear, affect the principle of the ultimate legal authority of Parliament.

Parliament and Colonies. In the matter of the relationship of Parliament to the French colonies, as in its relationship to the local communities that constitute "metropolitan" France, less practical importance attaches to the legal principle that Parliament may pass any legislation it sees fit than to the concrete question of what legislation it sees fit to pass. As a matter of fact, France is generally considered to govern well a colonial empire the re-establishment of which was, as will be seen, a praiseworthy accomplishment of earlier years of the Third Republic.[1] At present, French colonial legislation applies to an area more than forty times as large as France proper; whereas the French colonial population is equal to only about one-seventh of the "metropolitan" population. It is a unique feature of French policy that the colonial population is represented in both Chambers of Parliament, even though the distribution of the members allotted to the colonies follows no rational principle. "Diversity, inequality, arbitrariness, and injustice," says M. Joseph-Barthélemy,[2] "characterize the organization of colonial representation." From a practical point of view, some compensation for this situation is to be found in the fact that the colonies are well represented on

[1] Cf. p. 238, *infra.*

[2] *Op. cit.*, p. 288.

consultative bodies associated with the executive.[1] Of especial importance in this respect is the Superior Colonial Council. So far as French legislation is concerned, the colonies are to be divided into two classes,—the three "old colonies," Guadeloupe, Martinique, and Réunion, and the rest of the colonies. The "old Colonies" are not subject to an Act of Parliament unless an Act of Parliament extends it to them. For the other colonies, legislation takes in practice the form of executive decrees. The President of the Republic possesses the power to extend Acts of Parliament to these colonies, or he can directly formulate provisions applicable to them.

The French Concept of Legislation

Parliament and Subordinate Lawmaking. The employment in France through executive decrees of a large measure of what is substantially executive lawmaking authority is a matter of the highest importance and interest for students of government. This exercise of executive authority is, it must be clear from what has been said, completely subject to the legal power of Parliament; and yet, in practice, its consequence for the actual exercise of authority by Parliament is very great. French statutes, that is, Acts of Parliament, are frequently contrasted by students of government with statutes in England and the United States, in the matter of the terms in which they are expressed. In France, the regular practice is for statutes to state only the fundamental principles of law and, therefore, to be couched in general language. On the other hand, English and American statutes, though a somewhat pronounced tendency in the direction of French practice is developing, attempt to regulate in great detail the matters with which they deal. In all cases, where details are omitted and left to be filled in, executive orders are employed. This, from the nature of the case, is the regular practice in France. Such subordinate legislation, as has been seen,[2] is in principle issued by the President of the Republic, which means by responsible Ministers. The situation in France in this respect may be argued to possess solid advantages. Where a legislature in modern times attempts to deal in detail with complicated technical problems, the members' incompetence, which it is no derogation of legislators to assume to be characteristic of them, will either cause statutes to be badly drawn or else cause members of the legislature to entrust drafting to experts. In the latter case,

[1] Cf. p. 130, *supra.*

[2] P. 114, *supra.*

approval by the legislature is no real protection to individuals; and representation of the people is a delusion. If, in spite of an attempt to pass detailed legislation, a legislature finds itself constrained to leave a measure of rule-making authority to the executive, as for example in the case of the Interstate Commerce Commission in the United States, individuals find themselves in the precarious position of being in relations with a body possessing executive, legislative, and judicial powers. This is, in reality, a far cry from the Doctrine of the Separation of Powers. In France, the situation is met in a realistic fashion. The legislature does in the realm of legislation what it is competent to do,—namely, it approves or disapproves in the popular interest only general principles. It does not concern itself with details with which it is not really qualified to deal and which are likely, in any event, to need in practice modification and adaptation that legislatures are too deliberate easily to effect. On the other hand, the Doctrine of the Separation of Powers is applied at a level at which it affords real protection to the individual. A single agent or agency does not make rules, execute them, and settle controversies that arise with respect to their execution. The association of consultative and advisory bodies with the executive insures expertness and affords protection;[1] and the separation of active administrators from the administrative courts is, as will be seen presently, further guarantee for the individual.[2]

Decree-Laws. An executive decree is valid only within the limits set by provisions of the statute which the decree is issued to execute. However, if, as happens in exceptional cases, the provisions of the statute, instead of establishing principles of law with respect to the solution of a given problem, merely authorizes the executive to deal with a general situation,—then, the character of the decree power, though exact distinctions are difficult if not impossible, becomes substantially a different affair. This is the case in France with respect to the striking phenomenon known as "Decree-Laws." Parliament in effect turns over to the executive the task of dealing with a critical general situation and delegates the legal power to solve it. Examples include the Decree-Laws of the Poincaré ministry that dealt with the "crisis of the franc" in 1926, the Decree-Laws of the Doumergue ministry in 1934 in connection with the critical situation growing out of the Stavisky scandal, the Decree-Laws of the Laval ministry in 1935 in another financial crisis, and the Decree-Laws of

[1] Cf. p. 130, *supra.*

[2] Cf. pp. 193-202, *infra.*

the Daladier ministry beginning in 1939 issued in the effort first to speed France's national preparedness in the face of international crisis and later to prosecute war against Germany.[1] All these cases are a kind of admission of the inability of Parliament to cope with an acute situation, and mark to some extent a decrease in the prestige of political democracy.[2] The grant of authority is made, it is true, only for a limited time, and a period is fixed within which ratification of the Decree-Laws by Parliament must be made; but, meanwhile, the Decree-Laws are the law of the land. There are people who insist that each time Parliament, through expiration of the period of delegation, reassumes its normal position, it is weaker than before, and that increasing weakness may ultimately threaten seriously parliamentary government itself.

[1] Cf. p. 141 n, *supra*.

[2] Cf., on the other hand, p. 172, *supra*.

CHAPTER VII. THE FRENCH JUDICIARY

1. HISTORICAL DEVELOPMENT

The Two Systems of Courts

Ordinary and Administrative Tribunals. Several general characteristics of much interest differentiate the judicial system of France from the judiciaries of countries the legal systems of which are based on the Common Law of England. Not the least striking of these is the fact that in France two separate systems of courts exist. One of these is the system of ordinary courts; the other is a system of administrative tribunals. In general, most controversies in which the State or an administrative officer is a party are heard in the administrative courts. However, criminal cases have always constituted one large class of exceptions. These, together with civil cases in which the parties are private individuals, form, in general, the province of the ordinary tribunals. For the purpose of settling in a given instance doubt as to whether a case falls within the jurisdiction of one set of courts or the other, a tribunal has been set up at the head of both systems. It is known as the Tribunal of Conflicts.

Court of Conflicts. The Tribunal of Conflicts consists of eight judges and two substitute judges. Six of these judges are chosen three each by the highest court of the ordinary system and the highest administrative court. The six thus chosen select the two other judges and the two alternates. The Minister of Justice is *ex officio* president of the Tribunal; but he does not normally serve except in a case where the judges are equally divided. In actual practice, the Tribunal of Conflicts hears only some six or eight causes a year.

Judiciary and Administration. The existence of the two systems of courts in France had its origin in the establishment at the time of the French Revolution of a rigid separation between administrative and judicial authorities. The end sought to be accomplished was prevention of interference on the part of the regular

judiciary in the work of administration. Following the Revolution, the work of political and social reorganization that was contemplated assumed the most formidable dimensions. For historical reasons, this work was currently considered to be work that ought to be accomplished by the administrative authorities. According to De Tocqueville, all classes of people looked to the administration as to "a special providence." Examples of judicial interference with administration were in 1789 known to everyone, the judiciary in the immediate past having more than once nullified attempted reforms.[1] In the result, various legal provisions were, during the period following 1789, formulated with a view to preventing the judiciary from interfering in the work of administration. Thus, a law passed in August of 1789 contained the following stipulations: "Judicial functions shall be distinct and shall always remain separate from administrative functions. Judges shall not, under penalty of removal, disturb in any manner whatever operations of administrative bodies." Again, a provision of the Constitution of 1791 was phrased as follows: "The tribunals shall not encroach on administrative functions nor summon before them administrative officials by reason of the exercise of their functions." The following stipulation was contained in a law enacted in the year III: "It shall be expressly forbidden for the tribunals to take cognizance of administrative acts of any kind whatsoever." Other provisions of the same tenor were subsequently enacted. Finally, the Penal Code provides in several places for punishment of judges who encroach on administrative functions.

The Separation of Powers in France

Montesquieu Abroad and at Home. All this was, and is, justified theoretically in France through the invoking of the famous Doctrine of the Separation of Powers. This situation, it is of the greatest interest to note, represents a marked contrast between France and the United States. One of the basic principles of the American Constitution is, as is well known, that of the Doctrine of the Separation of Powers. According to Madison writing in the *Federalist,* Montesquieu was the "oracle" of the Framers of the Constitution. However, the contrast that is to be observed in this respect between France and the United States grows out of different applications that have been made of the famous doctrine in the two countries. In America, practical im-

[1] Cf. p. 52, *supra.*

portance attaches to the Doctrine of the Separation of Powers primarily in connection with the relation between executive and legislature. The doctrine serves as a theoretical justification for the highly important fact that government in the United States is non-parliamentary in character. In the home land of Montesquieu, on the other hand, the Doctrine of the Separation of Powers has been applied primarily to the relation between the administration and the judiciary. As a consequence, inasmuch as the existence in France of administrative courts in addition to ordinary courts grew out of the separation of the judiciary and the administration, the Doctrine of the Separation of Powers serves as a solid theoretical basis for two systems of courts.

Individual Rights vs. the General Welfare. The explanation of the different applications that have been made of the Doctrine of the Separation of Powers in France and the United States is to be found in different emphases that have grown out of different experiences. As a matter of fact, both countries have been influenced more by practical experience than by abstract theory. Institutional arrangements have been determined largely by what has been learned in practice; and, for the most part, doctrine has been invoked as justification after the fact. So far as contrast is concerned, the difference in emphasis has been the primordial difference between the individual and social point of view. Early American experience that antedated the Constitution of the United States was experience with conditions in which, as is often stressed, individualism flourished. Government in general and its most active element, administration, in particular, far from being looked to "as to a special providence," were normally distrusted. The result, in the matter of form of government, was belief that executive and legislature should be so separated as to check and balance each other. The judiciary, in the presence of a high degree of emphasis on private rights, was looked to as the protector of the individual. On the other hand, as a general rule, where a considerable measure of maladjustment exists in social conditions, attempts on the part of government to cope with the situation from the point of view of the general welfare will in a relative sense inevitably remove emphasis from established individual rights, with the consequences that are naturally involved. This was illustrated in the United States and Canada during the period that followed the Great Depression of 1929. In both countries, governmental efforts to effect a "new deal" gave rise to hundreds of cases that flooded

the courts. The judiciary unfortunately or fortunately, depending on the point of view, retarded the progress of "social justice." The French, as has been seen, early had experience with judicial "interference" with efforts to cope with fundamental social maladjustment. The constitutional and institutional results were those that have been noted. In so far as, in the beginning, individuals suffered in their rights through inability to seek redress from the judiciary, the accepted view was that this was something to which the individual must submit in the public interest.

Judicial Administration. In the period immediately following the Revolution, the absolute character of the prohibitions imposed on the regular judiciary resulted in a simple, if unsatisfactory, situation. Administrative agents were freed from all judicial control. So far as private individuals were concerned, their only relief against the administration consisted of appeal to active administrative agents. The fact that these agents were elective was, according to Revolutionary ideas, sufficient guarantee; but, in practice, this was more than doubtful. The administration possessed a dominant position; and it practiced domination. Reaction was inevitable. In the result, with the passing of time, various developments gradually improved the position of the individual in his relationship to the process of administration. A first step of much potential importance was the establishment under Napoleon Bonaparte of councils of jurisconsults.[1] At the national level, the Council of State was set up, and, at the local level, Prefectoral Councils. Out of these developed the present system of administrative courts. History shows that, where an active administrator follows the practice of seeking the counsel of a group of men who surround him, a tendency will manifest itself for advice concerning controversies that come before the administrator for settlement to become the specialized province of a specialized personnel of specialized competence. This was the general historical origin everywhere of the judicial branch of government; and it was the particular origin of French administrative courts. In the second respect, there was evolved in the course of the nineteenth century the distinction that the French now regularly make between *active* administration and *judicial* administration. Certain members of the Council of State and the Prefectoral Councils became, though administrative officials, men of judicial training and character. In other words, they became administrative judges. Active administrators were, by the

[1] Cf. p. 56, *supra,* and p. 216, *infra.*

end of the nineteenth century, eliminated from concern with litigation growing out of administration. In turn, forms of procedure and protection that had been developed by the ordinary judiciary were extended to such litigation. Real guarantees were developed. In the result, the French citizen has come to feel that the administrative courts consist of true judges and that with them his interests in relationship to the State are in good hands. Simultaneously, through developments that are by no means simple to trace in detail, ideas of the liability of the State for injury suffered by individuals at the hands of its agents have, partly through legislation and partly through decisions of the Council of State and partly through the teaching of Administrative Law, been extended to limits increasingly more liberal and reasonable.

2. THE ORDINARY COURTS AND JUSTICE

The Civil Courts

Horizontal and Vertical Division. The system of ordinary courts in France consists of judicial bodies that are arranged on certain levels one above the other in the manner familiar the world over. This hierarchical arrangement, or horizontal division, is supplemented by a vertical division of the ordinary courts into criminal courts and civil courts, the result thus being a double hierarchy. In addition to these two series, a few specialized courts are likewise normally listed as parts of the ordinary judicial system.

Juges de Paix. At the base of the system of ordinary courts in France are Justices of the Peace. At present, there are some 3,000 of these judges. In principle, there is a Justice of the Peace in each Canton, though in some cases the jurisdiction of a Justice extends to two or more Cantons. Justices of the Peace were established in France at the time of the Revolution. The step was inspired by the existence of Justices of the Peace in England. At the same time, the resemblances in the two cases are for the most part superficial; whereas several definite differences exist.[1] The French Justice, unlike his English counterpart, is paid a small salary; and he is required, unless he has had somewhat extended experience as a public official, to possess some knowledge of the

[1] The English Justices of the Peace are, practically speaking, wholly without civil jurisdiction, tribunals known as County Courts administering justice on a local scale in this respect.

law. He is appointed in theory by the President of the Republic but in practice by the Minister of Justice. He may be removed by the same Minister; but certain safeguards exist. In the matter of appointment, political considerations undoubtedly enter in; but, in general, the Justices are picturesque, elderly men of shrewdness, wisdom, and other admirable qualities.

The Justices of the Peace and Civil Justice. The courts of the Justices of the Peace are, as there will be several occasions to repeat, the only courts in France presided over by a single judge. Moreover, the Justices, aside from certain administrative duties, perform several other judicial functions than that of sitting as a court. In the first place, they are, in certain cases determined by law, competent to serve as arbitrators. It should be noted, in general, that the whole system of French civil justice is supplemented by the possibility of *arbitration.* This is, in essence, a procedure by which a controversy is, through a contract under seal, submitted by the parties for decision to a private individual. Especially interesting in this connection is a law passed at the end of 1936 establishing obligatory arbitration in connection with controversies growing out of collective bargaining. So far as Justices of the Peace are concerned, they are, within certain limits set by law, the arbitrators in controversies as to contracts between individual workers and their employers. In the second place, the Justices of the Peace engage in extensive efforts at conciliation. By law, no civil process may begin until the parties have appeared before a Justice of the Peace, who instructs them as to their rights in the matter, points out the difficulties and costs of prolonged suits, and attempts to bring about a peaceful settlement of the controversy. This is usually said to be the typical function of Justices of the Peace; and, in fact, they perform a valuable service in this respect. In urban communities, it is true, the conciliation procedure is a pure formality; but, in the countryside, among the peasants, a large part of potential litigation is settled without trial. Where conciliation is unsuccessful, the Justice of the Peace sits as a court to hear cases falling within the limits of his jurisdiction. In questions connected with personal property, his jurisdiction extends to all cases involving claims up to 4500 francs (c. $130); and, where the amount is less than 1500 francs (c. $40), no appeal is possible. In respect of real property, the jurisdiction of the Justice includes all actions involving possession where the relief consists of enjoining another party from troubling the possessor in his possession or of restoring a party to a possession from

which he has been violently ousted. Finally, in his capacity as a judge, the Justice of the Peace is said to have a voluntary (*gracieuse*) jurisdiction, which consists primarily of presiding over family councils. In general, these local judges effectively administer substantial justice in a summary and inexpensive fashion.

Industrial Disputes Councils. On the same plane with the Justices of the Peace stand approximately two hundred special bodies known as *Conseils de prud'hommes.* They are Industrial Disputes Councils, which may by executive decision be established in industrial cities for the purpose of dealing with controversies growing out of contracts between employers and workers. The Council consists of an equal number of employers and employees elected, in each case, by their fellow employers or fellow workers of both sexes. The members are elected for six years, one-half being renewed every three years. One employer and one employee make up a Conciliation Bureau, before which parties to a controversy must appear in order to allow an effort at settlement without trial. If conciliation is unsuccessful, the case is heard by a General or Trial Bureau, composed of an equal number of employers and workers. In case of an equal vote, the Justice of the Peace is called in to preside and to cast the deciding vote. The jurisdiction of such a Bureau extends in principle to all controversies growing out of a contract for work. If the amount at stake is 1500 francs (c. $40) or less, no appeal exists. If the amount is higher, an appeal may be taken to the civil court known as the Tribunal of First Instance. Furthermore, if an amount of 2000 francs (c. $60) or more is involved, the original jurisdiction of the Bureau is concurrent with that of the Tribunal of First Instance, the plaintiff possessing the option of bringing the case before either one or the other.

Tribunals of First Instance. The basic trial courts for civil cases are the Tribunals of First Instance. The composition of these courts varies in their several jurisdictions according to the average amount of business to be dispatched. In this respect, the Tribunal sits, if desirable, in sections. In accordance with the French principle that the administration of justice is the function of a plural body, a case is normally heard by three judges, a president and two others. Needless to say, this greatly increases the number of French judges. Indeed, the situation with respect to the Tribunals of First Instance, of which before 1926 there was in principle one for each Arrondissement, was for many years a subject of vigorous criticism. Some Tribunals had rel-

atively little business; and it was difficult, in these instances, to secure a sufficient number of sufficiently competent judges. However, local resistance to abolition of such courts was highly persistent. Not until the financial crisis of 1926 was it possible to reduce the number of Tribunals of First Instance. The jurisdictional area of the courts became the Department instead of the Arrondissement, sections sitting, where desirable, in important cities of the Department. With the passing of time, the reform proved incapable of holding its own against local pressure. The former courts have now been re-established, though in some instances with a smaller personnel, in all but some half dozen cases. In the result, the number of Tribunals of First Instance is about 360. In practice, the president of the Tribunal performs alone a few functions; and the members of the Tribunal, sitting in chambers, dispatch a certain amount of business. Sitting as a court, the Tribunal has appellate jurisdiction in respect of cases appealed from the Justices of the Peace and from the Industrial Disputes Councils; and it possesses a general unlimited original jurisdiction beginning where the jurisdiction of the Justice of the Peace ends. In cases involving personal property, no appeal may be taken unless the amount at stake exceeds 7500 francs (c. $200). Similarly, in cases involving real property, the decision of the Tribunal is final, unless the property in controversy produces a revenue of more than 300 francs (c. $8) per year.

Commercial Tribunals. Just as the special Industrial Disputes Councils stand on the same plane with Justices of the Peace, special courts known as Commercial Tribunals stand on the same plane as the Tribunals of First Instance. The Commercial Tribunals number about 300. They are established by executive decree in commercial centers. When no such tribunal exists, the special commercial jurisdiction is exercised by the Tribunal of First Instance. The Commercial Tribunals are composed of members elected for two years by business people domiciled in the community. Women may vote but may not be elected. A president of the Tribunal is elected separately from the other members of the court. The Tribunal may sit in sections. Its jurisdiction extends to commercial cases as defined by a special body of commercial law. No appeal may be taken from its decisions unless the amount of money involved is 7500 francs (c. $200) or more.

Courts of Appeal. Next in the judicial hierarchy above the Tribunals of First Instance and the Commercial Tribunals are

the Courts of Appeal. France proper is divided into 25 appeal districts, for each of which there is a Court of Appeal; and a Court for Corsica and one for Algeria bring the number up to 27. A Court of Appeal is composed of a first president, of section presidents for such sections as are necessary to handle the normal business of the Court, and of a number of judges necessary to constitute the sections. In practice, five judges usually sit. So far as civil cases are concerned, there is at least one Civil Section. Appeals are heard from the Tribunals of First Instance or from the Commercial Tribunals. A case that is appealed is heard *de novo,* and the decision either affirms the original determination or gives another in its place. In certain instances, two or more sections join to perform specific functions. In others, the whole membership deliberates behind closed doors.

Court of Cassation. The highest French court of the ordinary system is the Court of Cassation. It is composed of three sections. Each section consists of 15 judges and a section president. For the whole Court there is a first president, the total number of judges thus being 49. Two of the sections form part of the civil side of the judicial hierarchy. One of these is the Petitions Section, and the other is the Civil Section. The first has as its task the preliminary examination of civil cases, brought from the Courts of Appeal, with a view to determining whether they deserve hearing and decision at the hands of the Civil Section. It should be noted that cases are not *appealed,* in the strict sense of the word, to the Court of Cassation. In French law, an appeal implies that a higher court can substitute another decision in the stead of that pronounced by a lower court. On the other hand, the Court of Cassation accepts without question the facts determined by the court which has previously heard the case. It concerns itself only with correct application of the law. The relief sought from it is known, as the name of the Court implies, as *cassation.* This word (from *casser* = to break) is equivalent to *quashing.* When the Court, on the basis of law, quashes a decision, it remands the case to another court of the same jurisdiction as that from which the case was brought. At the rehearing, after due allowance for the correct interpretation of the law as decided by the Court of Cassation, the decision may be, though of course by no means necessarily, the same as before. On the other hand, the case may on occasion be heard a second time on a point of law by the Court of Cassation, in which contingency the Court sits with all sections meeting together. If the Court

quashes the decision again, the court to which the case is next remanded must accept the solution of the Court of Cassation. Besides its normal activities, the Court as a whole likewise performs a certain number of special functions, such, for example, as making determination in respect of a proposal for the removal of a judge of the regular judiciary.[1]

Penal Justice

Criminal Courts. On the criminal side, the hierarchy of ordinary courts follows in outline the series of civil courts. The principal exception results from the introduction of a Court of Assizes for the trial of cases involving serious crimes. Otherwise, the criminal courts, although the names are in some cases changed, correspond to the civil courts, other than the special courts. Thus, a Justice of the Peace sits to try minor offenses, the court in this case being known as a Simple Police Tribunal. Minor offenses (known as *contraventions)* are those punishable by a fine of from 1 to 15 francs or by imprisonment for from 1 to 5 days. Then, misdemeanors (known as *délits*), with the exception of those connected with the Press, are tried by a Correctional Tribunal, the name given to Tribunals of First Instance when sitting as a criminal court. The Tribunal is, as when serving as a civil court, composed of three judges; but it sits without a jury. Misdemeanors are defined as offenses punishable by fines exceeding 15 francs (c. 40¢) or by imprisonment for more than 5 days. Appeals from the Simple Police Tribunals are taken to the Correctional Tribunals, appeals from the Correctional Tribunals to the Criminal Section of the Courts of Appeal. On a point of law, further relief may be sought in the Criminal Section of the Court of Cassation.

Courts of Assizes. A Court of Assizes is established in each Department. Such a Court is normally set up once every three months; but, in exceptional cases, special sittings may be held, the exception being practically the rule in Paris. The Court consists of three judges, a president and two assessors. The president is regularly taken from the Court of Appeal. The assessors are usually taken from the Tribunal of First Instance for the city in which the Court of Assizes sits; but if this city is also the seat of the Court of Appeal, the assessors may be taken from this Court. This is the only court in which a jury is employed. Jurisdiction of the Court extends to misdemeanors in connection with the

[1] Cf. p. 188, *infra.*

Press and, in general, to felonies (*crimes*). From a decision of the Court there is, strictly speaking, no appeal. The Criminal Section of the Court of Cassation may merely quash on legal grounds the decision of the Court, and remand the case for further trial.

Criminal Procedure and the Jury. Procedure in French criminal cases is at numerous points different from procedure in Common Law countries. These differences give to French procedure no little of its interest. When the police have indicated that a penal offense has been committed, cases are, on receipt of a communication from a prosecuting official of the State, thoroughly examined by specially qualified investigating officials (*juges d'instruction*). These officials are in small communities judges of the Court of First Instance, who combine the work of investigation with the task of serving as judges; but, in larger communities, they give practically all their time to investigation. These investigating judges possess wide powers. They can order arrests, authorize searches and seizures, summon and question witnesses, and employ experts. They may dismiss a case if they think that the evidence does not warrant proceeding with trial. Otherwise, they decide whether the case is one for the Correctional Tribunal or for the Court of Assizes. In the latter event, the case is sent by the investigating judge, through the prosecution, to a section of the Court of Appeal known as the Indictment Section. This Section, composed of at least five judges of the Court of Appeal, performs the same general function as a grand jury. After thorough examination, it decides either to dismiss the case or to send it to the Court of Assizes for trial. The jury that is employed in connection with a Court of Assizes is chosen by lot from a sessional list of 36 names likewise chosen by lot from an annual Department list. The jury consists of 12 regular jurors and 4 alternates. The alternates substitute, if necessary, for one or more jurors who may in some way become incapacitated, thereby avoiding a retrial. The president of the Court, both in the Correctional Tribunals and in the Courts of Assizes, directs the trial, developing the case against the accused and questioning him and the witnesses. The prosecuting officer then pleads the case for the State, and counsel for the defense follows. In the Correctional Tribunal the judges decide guilt or innocence; but, in the Courts of Assizes, questions are framed by the Court for the jury, which, interestingly enough, decides by majority vote.

The Civil Party. In connection with the administration of criminal justice in France, a striking contrast with Anglo-Ameri-

can practice should be noted. In Common Law countries, if the circumstances involved in a criminal case are such that a civil case may grow out of the same facts, two separate and different actions are necessary. The prosecution seeks the conviction of the alleged criminal in the interest of society; and, if a private party desires to seek redress for injury which he feels he has suffered, he must institute proceedings in a distinct civil case. In France, on the other hand, only one process is necessary. In connection with a criminal trial, a "civil party" may enter the case; and, on the basis of the evidence adduced, the matter of damages or other civil right is decided by the court at the same time that the question of guilt or innocence is determined by the court or by the jury, as the case may be.

The Judicial Career

Sitting and Standing Magistracy. Members of the ordinary French judiciary, judged by the usual standards of independence and learning in the law, deserve high rank. In respect of their independence, the principal practical consideration consists of the fact that French judges are secure in their tenure. This, in turn, grows out of the established principle that no judge may be removed or suspended except upon the advice of a Superior Council composed of all the judges of the Court of Cassation. On the other hand, French judges are, according to English and American standards, very badly paid, a situation that is for the most part due to the large number of judges resulting from the collegial composition of French courts. Some compensation results from the fact that the bench is much respected by the people and that the judges enjoy high social standing. A consideration of the greatest interest and importance consists of the fact that the judiciary and the bar are separate and distinct careers in France. Judges are not taken from the bar. A young man in France, instead of going to the bar, as in Common Law countries, with only a vague idea that some day his career may be crowned with a judgeship, must determine in the beginning which career he desires to follow. If he elects the bench, he enters the judiciary early and works his way up the ladder of advancement. Before entrance, he must be 25 years of age, he must possess a university degree in law, he must serve a period of apprenticeship in which he gains practical experience through study of the actual work connected with the administration of justice, and he must pass a qualifying examination. The positions open to him upon enter-

ing his career include, it should be noted, those of several kinds of state attorneys attached to the various courts. Indeed, a young man entering the judicial career usually begins by serving as such an attorney. These officials are known as Judges of the Public Ministry. Together they constitute what is called the "Standing" Judiciary as distinguished from the "Sitting" Judiciary, composed of what most people think of as judges, namely, the judges who from the bench hear cases and render decisions. To whichever of the two sides a judge belongs, he wears the same costume and enters a tradition imbued with the same spirit. He can, and does, move from one side to the other, and back again. When he is a Standing Judge, he performs, on behalf of the State or society or the public, important functions. Much the most important of these he performs in criminal cases, when, as representative of society, he prosecutes alleged wrongdoers, who by definition are accused of having violated the peace and dignity of society. In civil cases, the Standing Judges who are attached to the several courts give their considered opinion concerning the questions at issue. Such an official speaks after the lawyers representing the parties to the controversy have concluded their arguments. He must be heard, failure in this respect leading to the quashing of a decision. He is conceived to be "the impartial voice of the representative of the law." [1]

3. ADMINISTRATIVE JUSTICE

The Administrative Courts

General and Specialized Tribunals. The general structure of the regular system of administrative courts is exceedingly simple. There is one highest court, the Council of State; and there are a limited number of Prefectoral Councils, which are courts subordinate to the Council of State. Then, in addition to these courts of the regular system, there exist certain specialized administrative tribunals.

The Council of State: Origin. An institution known as the Council of State existed under the *ancien régime.* However, it was an essentially different organ from the Council of State of the present time. The latter may for convenience be said to descend from the Council of State established by Napoleon at the

[1] Louis Gensoul, *L'Organisation de la justice* (Paris, 1928), p. 33.

beginning of the Consulate. Its composition and organization as a court have naturally varied from time to time, development in these respects being closely interrelated with stages of development in the concept of administrative justice.

The Council of State: Composition. As a court, the Council of State is composed of career officials, known as the "regular permanent personnel" of the Council. Of this personnel, a distinction may be made between the Councillors proper, known as "Councillors on Regular Service," who render decisions after due consideration, and other officials, whose function is almost exclusively that of preparing business for the consideration and decision of the Councillors. In the second category are officials known as "Masters of Petitions" and others called "Auditors." The lowest rank is composed of 26 Second Class Auditors. They are chosen by exceedingly searching and difficult competitive examinations which succeed in recruiting a highly trained group of university graduates.[1] Second Class Auditors may serve as such for a maximum of eight years, after which those who have not been promoted are appointed to various administrative posts. On the next higher level stand 21 First Class Auditors. They are selected from the ranks of Second Class Auditors or from among former Auditors who have served a minimum of four years in an administrative position. The Masters of Petitions, for whom there is an age requirement of 30 years, are 43 in number. At least three-fourths of them must be taken from the First Class Auditors. The remaining fourth, if taken elsewhere than from First Class Auditors, must be able to show ten years of public service. In all cases, the choice is made through executive decree on recommendation by the ranking members among the Councillors. For the Councillors, there is an age limit of 40. A provision of the Constitution stipulates that they shall be appointed by the Council of Ministers. At least two-thirds must be taken from among the Masters of Petitions. The other third may be selected without regard for legal limitations. However, in practice, Councillors who do not rise from the ranks of the Masters of Petitions are chosen from among high ranking civil servants. The Councillors on Regular Service at present are 39 in number. The Council of State in its capacity as an administrative tribunal has as its head a vice-president.

The Council of State: Organization. The Council of State as a court operates through two kinds of organization,—sections

[1] Cf. p. 135, *supra.*

and Plenary Assembly. The whole organization of the Council is the result of a series of careful reforms. The prevailing arrangements have as their principal aim the expediting of business. Dispatch is the more imperative in that the docket of the Council is always highly burdened. In the first place, there is a Litigation Section, composed of a president and 12 Councillors, together with Masters of Petitions and Auditors and, if need be, other officials designated by the vice-president of the Council of State. The section is assisted by a secretariat. Then, there are eight sub-sections, each composed of two Councillors, one of whom serves as president, together with Masters of Petitions and Auditors. These sections, by means of various possible arrangements, perform the functions both of preparing cases and of giving judgment. The Plenary Assembly is composed of the vice-president of the Council of State, the president of the Litigation Section, the presidents of the sub-sections, and three high administrative officials. In general, the president of the Litigation Section selects the cases to be referred to that section and to the Plenary Assembly respectively. He distributes the remainder among the several sub-sections. Moreover, sub-sections may, and on some conditions must, refer to the Litigation Section or to the Plenary Assembly certain difficult cases that have come before them for judgment. Finally, there is associated temporarily with the Council of State a Special Commission, which is somewhat complicated in its composition and which serves the function of judging pension cases brought to the Council of State for review.

Prefectoral Councils. Before 1926, there was a Prefectoral Council in each Department. A decree of that year effected a different arrangement, which is in existence at the present day. There is a Prefectoral Council for the Department of the Seine; whereas the remaining Departments are grouped into twenty-two regions, each with an Interdepartmental Council. The Council of the Seine is composed of a president, 2 section presidents, and 10 Councillors. Each of the Interdepartmental Councils consists of a president and 4 Councillors. The Councillors are appointed by decree on nomination by the Minister of the Interior; but they are recruited for the most part by competitive examination and promotion on the basis of merit. In somewhat the same category as the Interdepartmental Councils are Litigation Councils in the Colonies and the Administrative Tribunal of Alsace-Lorraine. Their composition is, in general, like that of the Prefectoral Councils.

Specialized Tribunals. The more typical examples of specialized administrative tribunals are three in number. They are the Court of Accounts, the Councils of Public Instruction, and the Councils of Military Review. The Court of Accounts [1] is divided into four sections. Its somewhat numerous personnel includes a first president, four section presidents, two kinds of Councillors, two classes of Auditors, and others. Of the several Councils of Public Instruction, two, the Superior Council of Public Instruction and the Superior Council of Technical Education, serve the nation as a whole; organs known as "Academic Councils" are regional in character; and Departmental Councils stand on a local level. A Council of Military Review, composed of four members, is established in each Canton.

Jurisdiction of the Administrative Courts

Specialized Jurisdictions. The jurisdiction of the specialized administrative tribunals is in general indicated by their names. The Court of Accounts passes judgment on public accounts, with the exception of accounts of the Communes and accounts of certain public establishments with revenue below a certain fixed amount. In the exceptional cases, accounts go to a treasury official, and come to the Court of Accounts only on appeal. The Councils of Public Instruction judge controversies that arise in the course of application of the various laws concerning education. The Councils of Military Review hear claims growing out of the operation of the system of military service.

Division of General Original Jurisdiction. Both kinds of administrative courts of the regular system exercise original jurisdiction. In general, the principle of the distribution of cases is one of enumeration and residue. The Prefectoral Councils have original jurisdiction in certain specifically defined classes of cases. The Council of State has original jurisdiction in the remainder.

Jurisdiction of the Prefectoral Councils. Though the principle is well established that the Prefectoral Councils have original jurisdiction in such cases alone as are allotted to them by law, being, in the absence of a formal stipulation, without jurisdiction, an exact determination of their jurisdiction is not easy. Indeed, the numerous and varied controversies that can by law come before them gives an impression of general jurisdiction that does not always seem consistent with the principle of enumeration. In general, their jurisdiction extends in the first place to

[1] Cf. p. 165, *supra.*

most litigation that arises in connection with administration of local affairs [1] and in the second place to certain kinds of litigation growing out of the local administration of national affairs. The largest class of cases heard by the Prefectoral Councils is composed of cases that are connected with direct taxes. Other classes include disputed local election contests and controversies arising out of public works operations and sale of government property. The Litigation Councils in the Colonies have a somewhat wider jurisdiction than the Prefectoral Councils; and the Administrative Tribunal for Alsace-Lorraine possesses, in addition to the jurisdiction of the Prefectoral Councils, jurisdiction over regional cases formerly falling within the jurisdiction of certain administrative tribunals that operated during the time that Alsace-Lorraine was a part of Germany.

Jurisdiction of the Council of State. The Council of State possesses three kinds of jurisdiction. The first kind is its *original* jurisdiction. This, as has been indicated, is a residual jurisdiction, including in general all cases not specifically allocated by law to the Prefectoral Councils. In the second place, it has *appellate* jurisdiction in the literal French sense; that is to say, it has authority to hear cases on review and, with respect to them, to hand down final decisions, either affirming or altering the decision of the lower courts. This jurisdiction extends to decisions made by the Prefectoral Councils, by the Litigation Councils in the Colonies, and by the Administrative Tribunal for Alsace-Lorraine. Finally, the jurisdiction of the Council of State includes authority, analogous to that of the Court of Cassation, to review and quash decisions handed down by the specialized administrative tribunals such, for example, as the Court of Accounts. The cases are then remanded for rehearing and decision in keeping with the decision of the Council of State.

Relief in the Administrative Courts

Private and Public Interests. The dictum is sometimes encountered in France, as it is in other countries, that a peaceful, law-abiding citizen may live out his life without contact with the judicial branch of government. However, in the complicated conditions of modern life, more than a little luck is required if an individual is to experience such immunity. Even to escape alleged

[1] Addition of cases in this category, especially in 1934, is in considerable measure responsible for the apparent inconsistency between principle and fact in respect to the jurisdiction of the Prefectoral Councils.

or actual infraction of the penal law is not easy; and, in the intricacies of economic and social life, the citizen is much more likely, possibly through no fault of his own, to become involved in litigation with another private party. He may have occasion to be thankful that society, acting through government, has established impartial arbiters, in the form of courts, to judge between himself and his fellow citizens. Sometimes, on the other hand, the individual or individuals with whom the citizen is likely, again possibly through no fault of his own, to come into conflict are agents of government. Here the situation is, though in form the same, substantially less simple. An impartial arbiter is at least as important as before; but, instead of a situation in which society is conceived to judge between the interests and rights of two of its members, the position of one of the parties is such that the interests and rights of society itself may be involved. Although, as a general principle, the true interests and rights of society ought to take precedence over individual claims, no one, no matter how strongly he is accustomed to stress the social point of view, would deny that the position of the individual ought to be given due consideration. Determination between the respective positions, with their interests and rights, is the province, which is becoming increasingly important, of "administrative justice." As may be readily imagined, the considerations involved are far from simple and easy.

Common Law Countries vs. France. Study of the principles and rules according to which justice is administered in the administrative tribunals in France is in its details technical and complicated. Nevertheless, consideration of certain general aspects of practice and principle that are involved in the matter offers opportunity for interesting and instructive comparison and contrast between France on the one hand and, on the other, countries whose legal systems are based on the English Common Law. In the one system as in the other, the effort is made, it may be safely assumed, to solve difficult problems in a way that has regard, so far as possible, for individual interest and public welfare. In the result, the solutions are, under the two systems, often essentially the same. Indeed, no practical reason suggests itself why the same thing, namely, the working of substantial justice, may not be accomplished in more than one way. However, when the French system and the Common Law system are examined less in respect of their results than of their principles, differences inevitably present themselves; and contrast is likely to be over-

emphasized. One result of this has been that students of the two systems have tended to manifest a certain mutual misunderstanding. The champions of one system, sure of its virtues, tend, through stress on differences and contrast, to infer the inferiority of the other system. For example, French students know that, as a general principle, individuals in Common Law countries may not, in the absence of special legal provision, seek in the courts redress from a government, as distinguished from its agents in their personal capacity; and the inference is made that individual rights must be in a precarious situation. Anglo-American students, on the other hand, learn that in France redress for actions by agents of government must be sought by individuals in courts that form part of the administration. The administration appearing to be both party and judge, violation of an ancient principle is thought to be involved. In both cases, as a matter of fact, a considerable amount of misapprehension is involved. Each system deserves sympathetic investigation by the advocates of the other.

The Rule of Law. Anglo-American views concerning justice in connection with governmental acts are much influenced by what is called the Rule of Law. Of the several aspects or meanings of the Rule of Law, one takes the form of the principle that punishment and redress do not come into play "except for a distinct breach of law established in the ordinary legal manner before the ordinary Courts of the Land." [1] This principle, in its application to ordinary penal matters and to civil actions between individuals, seems simple enough. Everyone probably feels instinctively that no person ought to be punished unless he has broken the law and that, with the same proviso, an individual ought not to be "made to suffer in body or goods." [2] No fundamental distinction between France and Common Law countries is here involved. On the other hand, the situation is somewhat less simple when non-penal relations between an individual and government are concerned. In the first place, government, it should be remembered, is an abstraction. Though government is frequently thought of and spoken of as acting, it acts, and can act, only through individuals, who are distributively the agents, and form collectively the organs, of government. Thus, an agent of government has two capacities or is, so to say, two persons. As an

[1] A. V. Dicey, *Introduction to the Study of the Law of the Constitution* (8th ed., London, 1915), p. 183.
[2] *Ibid.*

individual, he is governed by the same law as other individuals; and to him in this capacity the Rule of Law applies as to other individuals. However, he differs from individuals who are not agents of government in that a special body of law applies to him. This law determines the nature and extent of his agency. In other words, it defines his capacity as an agent of government. Such a person of double capacity goes his way daily, acting sometimes in one capacity, sometimes in the other, as circumstances may determine. So long as there is no violation of the law applying to his two capacities, he may be presumed to be secure in person and property, protected by the Rule of Law. However, at this point, an interesting consideration is involved. Whereas an individual, and hence an agent of government in his individual capacity, may act in violation of law, an agent of government cannot, strictly speaking, act illegally. This somewhat hair-splitting consideration is of much importance and of wide application. More especially, it involves an attempt at great exactness in connection with the concept of *validity* in respect of governmental action, that is to say, the acts of agents of government. In current speech, government and its agents and organs are frequently, and no doubt naturally, said to act in an illegal or invalid way. However, agents and organs of government in reality have no existence except as they are defined by law. In order for an act to be an act of an agent or organ of government, it must be defined by law. Hence, no act contrary to law can be an act of an agent or organ of government. When the statement is made in less accurate terms that an agent or organ of government acts illegally or performs an invalid act or acts without authority of law, the expression is, strictly speaking, a contradiction in terms. According to this strict conception, the person or group of persons who have acted are considered to have acted in their individual or personal capacity, not in their capacity as agents or organs of government. This is something of what is involved in the statement that the action is, legally speaking, *ultra vires.*

Excès de Pouvoir. Application of the principle of *ultra vires* is made in France as well as in Common Law countries. In other words, under the French as well as the Anglo-American legal system, any individual who feels that he has an interest in the matter which is involved may take the position that he is not bound by an attempted exercise of governmental authority, on the ground that there is in reality no legal authority for the act involved or, in other words, that the act is *ultra vires.* In such a

situation, an issue is joined; and the courts are called upon to determine the matter. At this point, however, certain interesting differences appear between the two legal systems. In the first place, an *ultra vires* case in connection with governmental action is in France heard in the Council of State, instead of in the ordinary courts as under the Anglo-American system. This difference, in view of the fact that in both systems the case is heard and decided by learned and independent judges, would not at first sight seem of much practical importance. However, this is not altogether true. For example, the two systems have their own procedures; and, in general, the French is simpler and, what is of no little importance, cheaper. The individual is to that extent better off under the French system. Experience would seem to show that, under the Anglo-American system, only when a considerable amount of property is involved will an individual generally take the trouble to initiate an expensive and possibly dilatory judicial action in which he may have to go through several courts only to lose in the end and to pay the costs. However, cases in which wealthy individuals contest the validity of governmental action are likely to be the very ones in which the public interest would be best served if the judges possess expert knowledge of the problems of modern administration. In these respects, the French system does not seem to suffer from comparison. In the second place, under the French system, a judicial decision holding that a controverted governmental act is *ultra vires* involves annulment of the act. If, for example, an attempted act of authority through an executive order or a local ordinance is declared *ultra vires,* the order or ordinance is annulled. On the other hand, a similar decision under the Anglo-American system applies only to the question in controversy. This difference is in reality not of much practical consequence. Some French students, it is true, have thought to see in the difference a superiority for the French system; but their view fails to give proper consideration to the strength of precedent under the Anglo-American system. A Common Law court, it is true, decides merely that, with respect to the case before it, the court, since its function is to apply the law and only what is the law, must decline to recognize as binding an attempted exercise of authority that is beyond the legal competence of the person or persons attempting the exercise. In general, it may be assumed that other courts will take the same position. Thus, under the two systems, an *ultra vires* action is, in the one case, theoretically and, in both cases

practically, null and void. However, it should be noted in this respect that by no means all governmental acts of doubtful validity are of such a character that the consequences of the actions may be avoided through a decision that the actions are *ultra vires*. Much, if not all, of the harm may already have been done. Hence, an individual will not feel that justice has been done merely through annulment. He will desire further recompense. Here, on the whole, his chances are somewhat better in France than in Common Law countries. But this raises the somewhat complicated question of the liability of government.

Government Liability. The Rule of Law, in another of its aspects or meanings, is said to involve the proposition that "every man, whatever his rank or condition, is subject to the ordinary law of the realm and answerable to the jurisdiction of the ordinary tribunals," and that, hence, "every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen." [1] As a matter of fact, the second part of this proposition would, if a position of strict accuracy is maintained, seem to be in contradiction with the meaning of the Rule of Law considered earlier. In other words, since, as has been seen, an official, such as a collector of taxes—to take only one example—cannot, strictly speaking, violate the law in his official capacity, that is to say, in the instance taken, as a collector of taxes, and since the processes of justice may not be invoked against anyone who has not violated the law,—then, in a strict sense, the courts may not take action against a governmental official in his official capacity. In less strict terminology, the statement may be made in ordinary current discussion that the collector of taxes has acted illegally and that a court has in some respect decided against him; but, it may be repeated, the person who has acted without the authority of law and against whom the decision has been rendered is not really, in such a case, the collector of revenue, but a private citizen who is also, when he acts within the terms of law defining the position of a collector of revenue, a governmental official. No doubt initial determination must be made by the court whether an action of which complaint is made was or was not *ultra vires,* was or was not within the authority of a collector of taxes, that is to say, whether it was performed by a government official or by a private individual; and, somewhat perhaps as one Siamese twin could not go to court

[1] *Ibid.,* p. 189.

without the other, both the collector of taxes and the private individual currently known as the collector of taxes, that is, a person in both his official and private capacity may doubtless be said to be before the court. But the point is that there is implicit in the situation the assumption that if the action is decided to have been performed by the collector of taxes in his official capacity, *ipso facto* the decision is that there is no illegal action before the court for determination. Conversely, if an *ultra vires* action is decided to have taken place, *ipso facto* not the collector of taxes but a private individual is decided to be involved; and the processes of justice operate against a private individual. In this context, the general principle of the Anglo-American system concerning an *ultra vires* action in respect of which annulment does not give complete relief may be stated. Redress—for example, payment of damages—must be sought against the person involved, not in his official but in his individual capacity. In this general situation, two specific disadvantages would seem to be involved. In the first place, a person who is an official of government may very well possess little or no property; so that securing a judgment against him in his personal capacity may be an empty gesture, affording no substantial relief. This, it is true, is in a measure inherent in the process of justice through civil action, a judgment against a private individual who is not an official of government being often subject to the same practical limitation. It is merely that operation of administrative processes, with the attendant chances that persons who are agents of government will exceed their authority, adds to the possibility that private individuals will suffer injury. In the second place, agents of government may in the course of duty, without exceeding their authority, injure private individuals in ways which, if another private individual were involved, would constitute breaches of law. The person receiving the injury would, in a literal sense, suffer as much in the one case as in the other. However, in the first case, the administrative agent would not be liable in his private capacity, since he was by hypothesis acting in his official capacity; and, since he was acting in his official capacity, he could not by definition have been violating the law, and, hence, according to the Rule of Law, he could not be held liable. For example, an individual might be struck and injured by a fire-truck speeding to a fire, or struck in the same way and injured to the same extent by an ordinary commercial truck proceeding in the same break-neck manner; in which cases, damages

could, presumably, be recovered in the second case, but not in the first. The disadvantages of the Anglo-American system, phrased as they have just been, would, at first glance, appear to leave the individual in an unfortunate position in his relations with administration; and justice would seem to leave something to be desired, in spite of the high sounding phrases of the Rule of Law. Indeed, on the basis of such a first glance, some French students have criticized the Anglo-American system as affording highly unsatisfactory protection to individuals. However, the apparent rigidity of the principles involved in the Anglo-American system is in actual practice much softened by various considerations. This is especially true of the second disadvantage mentioned,—namely, that individuals may be injured in the course of the operation of administration where the action involved cannot be said to have been *ultra vires*. In practice, the injured individual is by no means always without possible relief. Such possibility, notably, is specifically arranged by law. Exceptions to general principle are made. The principle which has been considered is sometimes expressed by the proposition that a government, in other words, its agents and organs, may not be sued without its consent. This proposition clearly implies that suit is possible where consent is given; and, in practice under the Anglo-American system, consent is expressed by government through law in respect of matters concerning which it has been possible to foresee that individuals may have just claims, especially in the matter of contracts, against government. The whole question is one that, in its many ramifications, is far from being without difficulty. At the same time, students of government will recall that Petitions of Right in England, the existence of the Court of Claims in the United States, and numerous legal arrangements in the several States of the Union are all indications of the fact that individuals possess, in spite of general principle, no small protection in their relations with government. Such protection is normally determined by provisions of statute law; but, even in the absence of statutory provisions, the Common Law, it may be noted incidentally, affords protection to the citizens against a large number of governmental agencies, namely, municipal corporations, by rendering these agencies liable in cases involving contracts and in cases of torts arising out of what are called the proprietary functions of municipal corporations. Statute law may, of course, extend this traditional liability to any desirable extent. The point is that, wherever the law so arranges, govern-

ment assumes liability for injurious results of the actions of its agents; and public funds are available when the courts award damages. Relief of this kind, growing out of judicial decision, is, in terms of logical classifications employed in France, to be distinguished from relief that may result from appealing to the governmental agent or organ concerned (*recours gracieux*) and relief that may result from appealing to a superior of the agent or organ concerned (*recours hiérarchique*). Such non-judicial relief is, of course, also possible in Common Law countries, the existence of democracy and a highly developed sense of justice insuring that it will be available in most cases where circumstances warrant it. In general, then, under the Anglo-American system, the individual in his relations with administration is protected widely. In the case of *ultra vires* acts, there is the possibility of practical annulment, where that is effective. From the persons who have performed *ultra vires* acts, there is often possibility, in their personal capacity, of redress. In cases not involving *ultra vires* acts, there is the extensive relief made possible by provisions of Common Law and statutes. And, finally, there is the operation of non-judicial relief. Under the French system, according to somewhat different principles, a wide measure of protection is also possible. However, full recognition of this fact by no means necessarily implies fundamental criticism of the Anglo-American system.

Official vs. Personal Wrong. Under the French system, a case in which satisfactory remedy results from a judicial declaration that an act is *ultra vires* is not, as has been seen, essentially different from a similar case under the Anglo-American system. Such cases are decided in different courts under the two systems, and, in France, literal annulment takes place; but no fundamental difference exists. Differences appear in connection with *ultra vires* cases in which further relief is desirable and with cases in which injury results from actions which are within the authority of the agents performing them. In respect of both kinds of cases, the French employ a different principle of classification. So long as injury results from an act done in good faith in the course of duty, no distinction is made between an act authorized by law and one not authorized by law. In the one case as in the other, there is said to be an "official wrong" (*faute de service*), and the government is liable. Decision is, of course, made by the administrative courts. An official wrong is to be distinguished from a "personal wrong" (*faute personelle*), a wrong characterized by

being "detachable" from the function involved, because of the bad faith and the evil intent of the person performing the act. Here the liability is personal, and redress must be sought in the ordinary courts.

Liability for Faute de Service. The official wrong, with government responsibility for it, is the outstanding aspect of French administrative justice. Two claims are made, not without reason, for the French system. In the first place, the individual citizen sometimes secures relief in cases in which, under the Anglo-American system, he would, either because the person who is an agent of government is in his private capacity without property or because the law has not made the government liable, be without relief. In the second place, an agent of government is not rendered cautious about performing his duty in good faith, for fear of inadvertently becoming personally liable.

CHAPTER VIII. LOCAL GOVERNMENT IN FRANCE

1. INTRODUCTORY

The dictum that France is a highly centralized country has been accepted and repeated now for a long time both inside and outside France. No great difficulty, however, would attach to demonstrating that the dictum is not characterized by a high degree of precision. Careful study, on the contrary, would show that the proposition can be maintained only in a general sense. This results, among other things, from the easily demonstrable fact that no simple test exists by which centralized government can be distinguished in itself or from what is presumably its opposite, *decentralization*. The whole matter has a theoretical side and a practical side, which are interrelated; and various particular relationships and interrelationships are involved. Indeed, the whole question is a study in itself. For present purposes, it is enough to bear in mind that the relationship of local government to general government can merely be said to be on the whole or on the balance centralized or decentralized, that viewed in this way France is centralized, and that the existence of this centralization has certain practical results which are of no little interest and importance to the student of government.

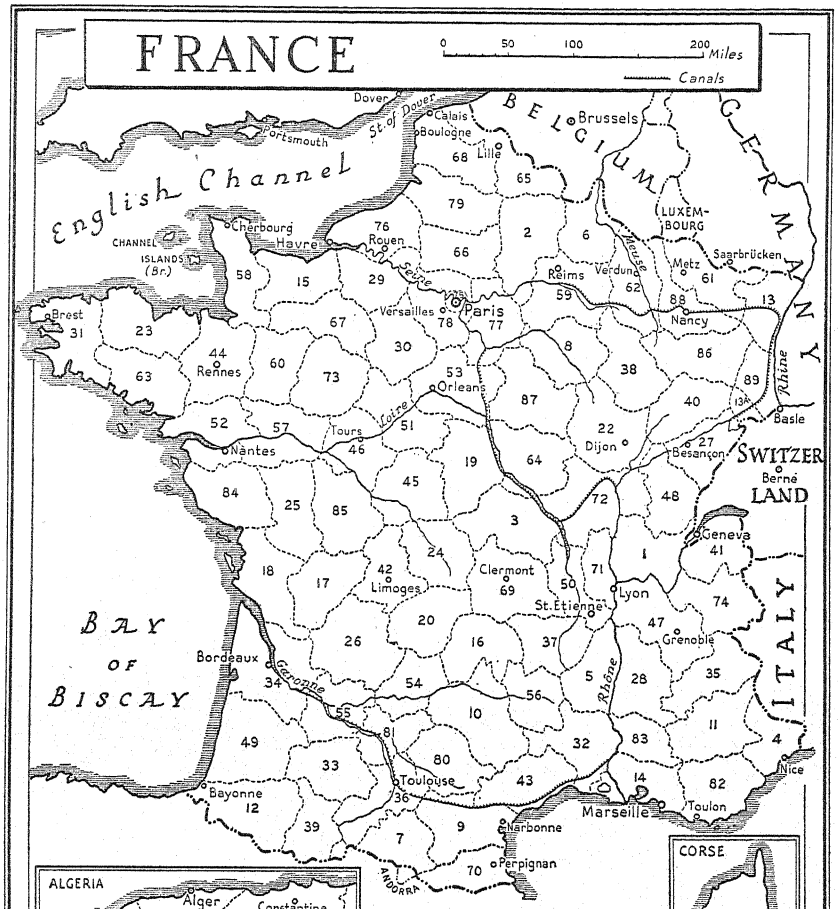
In France, the expression *local government* is, though not unknown, neither usual nor, on the whole, congenial. French students and French studies employ more naturally the expression *local administration*. Though this is to some extent little more than a matter of terminology, the emphasis as such is clear enough. Even where a relatively decentralized relationship exists, such as in England and in the states of the American Union, local government is not infrequently spoken of as administration, when the emphasis is less on local activity as the manifestation of autonomy on the part of a local community than on the relationship of local government to the general government. In France, the ties between national government and local government are so close that local government is viewed primarily as serving the

purpose of supplementing national governmental activities. Aside from legislation, which is regarded as the establishment of general principles of law by the representatives of the nation, the practical business of government is viewed as consisting of administration,—administration at a national level, at a regional level, and at other lesser local levels. Several kinds of elective local councils, as will be seen, exist, it is true; and this fact is the basis in France for several finely drawn distinctions. At the same time, local governmental activities are, in general, regarded as being administrative in character.

2. AREAS OF LOCAL GOVERNMENT

Departments. For purposes of local government, the principal territorial subdivisions of France are the Communes and the Departments. The history of the Communes extends far back into antiquity. The Departments, on the other hand, date from 1789. Correspondingly, the Communes are natural divisions that manifest a definite self-consciousness and possess real vitality, resisting jealously proposals of absorption; whereas the Departments, though they have with the passing of time entered to some extent into the customs and habits of thought of the French people, remain for the most part artificial and lifeless areas, for which, it is said, the people feel little respect and less affection. At the time of the Revolution, pronounced provincial particularism and definite autonomous aspirations existed; but they were submerged by certain forces making for unity and uniformity. Indeed, the Departments were set up precisely for the purpose of destroying local feeling. They were established on the simple principle that any person ought to be able to make a round trip to the seat of the Department from any point in the area in the course of a day. Needless to say, conditions in this respect have been greatly altered by improved means of communication. This fact is from time to time made the basis of arguments that France has need of larger governmental subdivisions.

Communes. The Communes number approximately 38,000. Their resistance to absorption causes the number to increase rather than decrease. Paris is the largest of the Communes, all cities large and small being Communes. The smallest Communes are mere hamlets of a few families. Indeed, a large majority of the whole number of Communes are small areas. Thus, about



1. Ain
2. Aisne
3. Allier
4. Alpes-Maritimes
5. Ardèche
6. Ardennes
7. Ariège
8. Aube
9. Aude
10. Aveyron
11. Basses-Alpes
12. Basses-Pyrénées
13. Bas-Rhin
13A. Belfort Ter.
14. Bouches-du-Rhone
15. Calvados
16. Cantal
17. Charente
18. Charente-Inférieure
19. Cher
20. Corrèze
21. Corse (Corsica)
22. Côte d'Or
23. Côtes du Nord
24. Creuse
25. Deux-Sèvres
26. Dordogne
27. Doubs
28. Drôme
29. Eure
30. Eure-et-Loir
31. Finistère
32. Gard
33. Gers
34. Gironde
35. Hautes-Alpes
36. Haute-Garonne
37. Haute-Loire
38. Haute-Marne
39. Hautes-Pyrénées
40. Haute-Saône
41. Haute-Savoie
42. Haute-Vienne
43. Hérault
44. Ile-et-Vilaine
45. Indre
46. Indre-et-Loire
47. Isère
48. Jura
49. Landes
50. Loire
51. Loir-et-Cher
52. Loire-Inférieure
53. Loiret
54. Lot
55. Lot-et-Garonne
56. Lozère
57. Maine-et-Loire
58. Manche
59. Marne
60. Mayenne
61. Moselle
62. Meuse
63. Morbihan
64. Nièvre
65. Nord
66. Oise
67. Orne
68. Pas-de-Calais
69. Puy-de-Dôme
70. Pyrénées-Orientales
71. Rhône
72. Saône-et-Loire
73. Sarthe
74. Savoie
75. Seine
76. Seine-Inférieure
77. Seine-et-Marne
78. Seine-et-Oise
79. Somme
80. Tarn
81. Tarn-et-Garonne
82. Var
83. Vaucluse
84. Vendée
85. Vienne
86. Vosges
87. Yonne
88. Meurthe-et-Moselle
89. Haut-Rhin
90. Oran
91. Alger
92. Constantine

30,000 Communes have populations of less than one thousand. The total number of Departments, inclusive of the Territory of Belfort, is ninety.[1]

Arrondissements and Cantons.[2] Other local areas are without real importance. Thus, for example, the Canton is largely a territorial division that is regarded as being merely useful and convenient in connection with the administration of certain general functions,—more particularly, those of a military, judicial, and electoral character. In other words, the Canton has no self-government. The idea that this area ought to have increased importance persists in France, and many proposals have been made with a view to bringing this about. However, no success has been realized. On the other hand, there has long been respectable support for the view that the Arrondissements ought to be abolished; and yet real accomplishment in this respect has met, and continues to meet, with stubborn resistance. The explanation does not seem primarily to be found in any vital sentiment of local autonomy. The Arrondissement, it is true, has a small popularly elected council; but these local assemblies are of exceedingly minor importance. Some practical importance no doubt attaches to the fact that members of the Arrondissement Councils form, as has been seen,[3] part of the Senatorial Electoral College of the Department; and yet other considerations are almost certainly of more moment. In the first place, under the existing electoral system for the Chamber of Deputies, with the Arrondissement as the basic constituency,[4] the area has become what is sometimes known as the *fief of the Deputy*. Its confines mark in general the extent of the patronage, the organization, and, in large measure, the interest of the Deputy. Abolition of the

[1] The area of France is 212,659 square miles. It is thus somewhat smaller than Texas (265,896 sq. mi.), but substantially larger than the next largest state, California (158,297 sq. mi.). It may easily be reckoned that the average size for the 90 Departments is about 2,360 square miles, almost exactly the area of Delaware (2,370 sq. mi.). The largest Department in area is the Gironde (4,140 sq. mi.); and, aside from the Seine (185 sq. mi.), in which Paris is located, and from the Territory of Belfort (235 sq. mi.), the smallest is the Rhône (1,104 sq. mi.). The Territory of Belfort consists of that small part of Alsace-Lorraine which, in 1871, was not taken by Germany. When, after the World War of 1914-1918, Alsace-Lorraine was restored to France, the region was divided into three Departments; and the Territory of Belfort retained its identity.

[2] There are approximately 280 Arrondissements and 3000 Cantons. With these figures, the average area of the Arrondissements and Cantons, the average number of Arrondissements and Cantons to the Department, the average number of Cantons to the Arrondissement, and the average number of Communes to the Department, to the Arrondissement, and to the Canton may be reckoned.

[3] P. 145, *supra.*

[4] Cf. p. 143, *supra.*

district is not calculated to be popular with him. This is particularly true if the Deputy supports the ministry in power; for the Cabinet, represented primarily by the Minister of the Interior, is likewise interested in the area as a cell in an electoral organization. The principal officer in the Arrondissement, the Sub-Prefect, is frequently known as an "electoral sergeant." From the point of view of the inhabitants, more especially those of the principal town of the Arrondissement, the Sub-Prefect and his staff frequently represent contacts with the outside world. The departure of such agents would mean a loss not only from the social and cultural but also from the mercenary point of view. The same considerations apply in general to the location of law courts in the several Arrondissements.[1]

3. AGENTS AND ORGANS OF LOCAL GOVERNMENT

Composition and Organization of Local Councils

Democratic Basis. Agents of local government are classified in France as deliberative agents and executive agents. This classification, though in appearance based on a difference of function, is, practically speaking, most closely connected with difference of origin. Thus, agents that are denominated *deliberative* are regularly elective in practice, whereas executive agents are, as will be seen, appointive. Deliberative agents are in all cases members of councils, these councils being the basic organs of local self-government in France. Though, as has been said, the Arrondissements possess councils, it is the General Councils of the Departments and the Commune Councils that demand primary consideration. All derive their authority from the same source as the national Chamber of Deputies; that is to say, they are elected by secret, direct, universal manhood suffrage. The Cantons serve as single-member election districts in the case of the General Councils of the Departments. The members of Commune Councils are regularly elected at large in the Communes, though, in several exceptional cases, the Commune is, for purposes of election, subdivided.

Size. The size of the General Councils of the Departments is, except in the case of the Department of the Seine, determined by the number of Cantons contained in a given Department.

[1] Cf. p. 183, *supra.*

The smallest General Council, composed of 17 members, is found in the Department of the Pyrénées-Orientales; the largest, of 67, in the Department of the Nord. The Council in more than twenty thousand Communes is composed of 10 members. This results from a provision of law fixing 10 as the size of Councils in Communes of less than 500 population. The size of the remaining Councils varies in general with the population of the Commune. The variation is from 2 to 5 members up to Communes of more than 60,000 inhabitants, which have Councils of 36. This is the upper limit for membership, aside from the exceptional cases of Paris and Lyon, with Councils of 80 and 54 respectively.

Terms. All local Councils are now elected for terms of six years. This has been the legal term of General Councils in the Departments and of Arrondissement Councils throughout the period of the Third Republic. The term of Commune Councils was extended from four to six years in 1929. In the case of the Department and Arrondissement Councils, one-half the members are chosen every three years; but, inasmuch as the law of 1929 made no such arrangement for the Commune Councils, integral renewal prevails with respect to them.

Eligibility. The rules of eligibility for membership in local Councils, though they are contained in different legal stipulations dating from different years and from different governmental systems, are, with almost negligible exceptions, uniform. Thus, in general, members must be qualified as voters, with the additional requirement that they must be 25 years of age. Moreover, members must not be affected by certain detailed stipulations determining ineligibility and incompatibility. Finally, candidates, to be eligible, must have certain ties with the area in which the Council concerned is to be found, at least three-fourths of the membership being required to possess eligibility through residence or domicile in the area.

Independence of Members. In the matter of privileges and immunities, certain differences exist between members of local Councils and members of the national Chambers. Thus, local Councillors are less protected in freedom of expression, being responsible before the ordinary courts for what they say. They are also in some cases held individually responsible for their actions; and they may be removed for things like refusal to perform their legal functions, prolonged absence without excuse, and participation in illegal council meetings. Conversely, members of

local Councils receive especial protection in respect of things like libel and violence.

Compensation. It is a general French principle that members of local Councils receive no regular salaries. Various efforts to change this situation by law have so far proved unsuccessful. On the other hand, Councils frequently reimburse their members for traveling and other expenses.

Quality of Personnel. According to M. Poincaré, the members of local Councils are, in general, men of such competence as to give to the observer an impression of unused resources.[1] Professor Joseph-Barthélemy suggests that they may well be considered more representative of the country than are members of the national Chambers.[2] Incidentally, local Councils contain in their membership a considerable number of Deputies and Senators. M. Poincaré, who rose at different times to be President of France and Prime Minister, was for some time both a Senator and member of the Council of his Department. Professor Joseph-Barthélemy combined membership in the Chamber of Deputies and in the Council of his Commune. Many other examples could be cited. In general, members of Parliament are willing and eager to enter the local political world, conducting, where necessary, vigorous campaigns to be elected. In fine, local Councillors are men of considerable experience, ability, and importance.

Sessions. In the course of a year, all local Councils in France hold one or more regular or ordinary sessions, and may hold one or more special or extraordinary sessions. In the case of the relatively unimportant Arrondissement Councils, neither regular nor special session can be called except by the Sub-Prefect. The other Councils may not only be called in special session by executive agents but also have some authority in the matter themselves. As determined by law, the Department Councils annually hold two regular sessions, the Commune Councils four.

Officers. Local councils, in common with practically every sort of assembly in France, choose their own officers. The officers of a given council form, as in the case of the national Chambers, what is known as the *bureau*[3] of the council. Such a council *bureau* consists, in general, of a presiding officer, of one or more deputy presiding officers, and of one or more secretaries. These officers are, in the case of the Department and Arrondissement

[1] Raymond Poincaré, *How France is Governed* (London, 1913), p. 70.
[2] Joseph-Barthélemy, *Le Gouvernement de la France* (3e éd., Paris, 1939), p. 163.
[3] Cf. p. 152, *supra.*

Councils, chosen annually on the occasion of the first regular meeting. The presiding officers are known as *presidents,* the deputies as *vice-presidents.* In the Communes, a council selects the Maire and a certain number of Deputy Maires for the same term as its own, that is, for six years; and these officials serve *ex officio* as president and vice-presidents of the council. The council likewise chooses, but only for one year, one or more of its members to perform secretarial functions. For this purpose, assistance may be brought in from the outside.

Rules. Local presiding officers assume protection of the meetings and meeting places of the councils; they preserve order during meetings; and they direct and regulate proceedings. For the most part, they perform their presidential functions through the application of rules of procedure, which are partly contained in general law and partly established by the councils for their own guidance. In the second respect, rules are in practice framed by most councils. The General Councils in the Departments are required by law to formulate a set of rules, whereas the Councils of the Arrondissements and Communes are left free to exercise their discretion in the matter.

Committees. In French local Councils, extensive use is made of committees. This is true even of Commune Councils. In all cases, the committees accomplish much useful work. Law requires that committees in Commune Councils shall be *special* in character, that is to say, that each be established for the study of one specifically determined question. Department Councils, on the other hand, choose *standing* committees, each of which has a particular sphere of activity and studies matters falling within that sphere. Committees in the Commune Councils may, if necessary, carry on their activities when the Councils are not in session. A Department Council possesses a specific committee of this kind, created by law. This committee, known as the *Department Committee,* is "an emanation of the council," representing it in the intervals between sessions. It is elected annually by the Department Council at the end of one of its regular sessions. The size of the Department Committee varies from four to seven, depending in general on the size of the Department. The Committee is required by law to hold every month at least one meeting, which is in practice not open to the public. Many Department Committees, especially in the smaller Departments, comply with the letter of the law by meeting at the end of a month and prolonging the meeting into the first days of the

following month. In this way, the number of legal meetings is in reality reduced by one-half. This situation is in a definite sense symptomatic of the fact that law anticipates a more important body than exists in actuality. As a matter of fact, the Act of 1871 that continues to be the legal basis of local government in the Departments [1] was originally framed with a view to making the Department Committee the central organ of that government. This Act was, of course, passed by the National Assembly of 1871, which has been called the most liberal assembly ever elected in France. No doubt exists but that a majority of its members were advocates of substantial extension of local self-government. This majority saw in the Department Committee, borrowed from Belgium, an instrument calculated to aid in realizing a large measure of decentralization. However, Thiers was by temperament an opponent of genuine local self-government; and he managed to secure, through amendments adopted in the course of passage of the Act, far reaching alterations. As a consequence, though the Act of 1871 has been proclaimed a landmark in the history of French local government, difference between the measure as introduced and as passed was greater than the difference between Department government before and after 1871. In the result, the position of the Department Committee greatly suffered. Nevertheless, the Committee as it exists is not without importance or interest. In any study of the various activities of local government in the Departments, the Department Committee is encountered again and again.

Meetings. Department and Arrondissement Councils meet in suitable rooms in the mansions of the Prefects and the Sub-Prefects respectively. Many of these mansions are historic buildings, which are often imposing and beautiful. The Commune Councils usually sit in buildings called by a name which M. Poincaré [2] found to be exceedingly pretty,—*la maison commune.* The number of meetings during a session is determined by the Council itself. The important factors are the amount of work to be done and the progress that has been made, especially through preparation in committee, in reducing pending business to a form in which it may be profitably considered in plenary sitting of the Council. Meetings of Arrondissement Councils are not public; but Department and Commune Councils regularly hold sittings to which the public is admitted and of which records are kept that are accessible to members of the public.

[1] Cf. p. 86, *supra.*

[2] *Op. cit.,* p. 41.

Minutes of public meetings are prepared by the secretaries or under their direction. Such minutes are adopted, with changes when desirable, at the following sitting. They are regularly signed by the presiding officer and a secretary; and, in the Communes, the members of the Council likewise affix their signatures. All voters and tax-payers may freely consult the minutes, such persons even possessing the right to copy and publish them. The Department Councils regularly publish their minutes in bound volumes, and a summary of the proceedings of each sitting is within 48 hours furnished for the use of the local newspapers. The minutes of the Commune Councils are copied into a communal register, the minutes of each sitting being posted outside the meeting-place within the week.

Local Executives

Agents of Local Government and Local Agents of Government. Local councils are, as has been said, regarded in France as being *deliberative* in character. Other agents concerned with government on a local scale, of whom there are several hundred thousand, are considered to be *executive.* Theoretically, executive agents fall into two classes. Some are officials who have been placed by the national government in a local community for the purpose of attending to national affairs on the spot; some are the agents of the local community, in so far as it governs itself. Otherwise expressed, some are local agents of government; others are agents of local government. However, this reasonably clear distinction is far from easy to apply in practice. Neither of the two standards of judgment that suggest themselves in the matter, that is, origin and function, affords very definite assistance. There is no good example of an executive agent elected locally; and, except for the Maire, there is no good example of an executive agent chosen by persons who have themselves been elected locally. The matter of function provides a better standard. It is possible to define a local official as one whose public activities are directly related to the sphere of competence of the Council of his community. However, according to this definition, there are few, if any, exclusively local French officers. Little more can be said than that, if their activities are *primarily* local, they are *essentially* local officials; for they are allotted as well national functions to perform. Moreover, many important local functions are performed by agents whose primary activities are national in character. In the one case as in the other, the agents have both a

national and a local side; or, as is emphasized by French students, they play a "dual role." The agents that best deserve attention in a study of French local government are the Prefect and the Maire. Both have a dual role. Nevertheless, the Prefect, it should be noted, is primarily a national, though likewise an important local agent; whereas the Maire is primarily a local official, with numerous national duties.

The Position of Prefect. There is a Prefect in each Department. Prefects are said to be appointed by decree of the President of the Republic on recommendation of the Minister of the Interior. This means that real choice belongs to the Minister. In making appointments, the Minister is not bound by any law stipulating special qualifications for the office of Prefect as such; but, in practice, the Minister, though definitely influenced by political considerations, usually chooses Prefects, as he was for a short time in 1934 and 1935 required by law to do, from certain classes of subordinate administrative officials. Prefects receive a fixed salary, varying with the class into which they fall. There are three of these classes, which are, generally speaking, determined by the importance of the Department to which a given Prefect is appointed. By decree of the President of the Republic, that is, by decision of the Minister of the Interior, a Prefect may be dismissed, though this is extremely rare; he may be transferred; and he may be placed on an inactive list on half-pay. Transfers are relatively frequent. An important political change is manifested in the attitude of the Ministry of the Interior; and what is known as a "movement" of the Prefects takes place. Transfer from Departments of the third or second class to a higher class involves automatically a higher salary; but Prefects of the third or second class are also automatically raised to a higher class after four years of service, in which case increase in salary is not dependent on transfer. Prefects may not be held on reserve at half-pay for a longer period than five years. Pension arrangements exist; but the political character of the position, with the resultant uncertainty of tenure, causes such retirement to be a less fixed expectation than in other cases. In addition to his official mansion and his salary, a Prefect receives a variable allowance for travel, office expenses, and the like.

The Prefect and Centralization. It has been customary to attempt graphic emphasis of the centralization of French administration through reference to its pyramidal structure. However, this figure of speech needs to be employed with a certain amount

of caution. Certain applications of such a figure, as for example to the relationship of larger areas to lesser areas, are, in general, valid in almost any country. On the other hand, the position of the Prefects in a pyramid, a position to which nothing closely corresponds in Anglo-American tradition, is an interesting one. If the President of the Republic be conceived as forming the point of the pyramid and if the several national Ministries be conceived as the beginning of a symmetrical spread outward and downward, the figure up to that point is accurate enough, even if not greatly different from that representing the situation in other countries. So far as France is concerned, if the figure of centralization were to be continued outward and downward to the next level in a further symmetrical manner, lines ought to run from each national ministerial department to one or more of its own agents in each Department. Though this situation has been developing in recent times, the traditional position of the Prefect is a flaw in the graph. The Prefect was intended to represent in the Department the national government as a whole; and, though from the nature of the case, a line running from the Ministry of the Interior to the Prefect ought to be especially pronounced, since the Minister of the Interior appoints the Prefects and since primary national functions performed locally by the Prefects fall within the sphere of and are under the control of that Minister, nevertheless, lines ought also to be drawn to the Prefect from other ministries as well. The recent developments that are to be represented by lines running from the several central ministries directly to its own agents, without passing through the Prefect, correspond to a definite tendency for the Prefect to become a substantially less powerful agent than he formerly was. Modern means of communication and other developments make it possible for Ministries in Paris to get much of their business on a local scale done through their own agents without recourse to the Prefect. At the same time, the Prefect retains no small part of his former famous position. The existence of the position recalls the organizing genius of Napoleon.[1] The position remains a difficult one, requiring for success a number of somewhat rare qualities. The Prefect transmits to those in authority the feeling for liberty that exists in the community, and he communicates to those who are interested in liberty the demands that proceed from authority. It has been suggested that the requirement is the difficult one of a man of worth who will

[1] Cf. p. 56, *supra*.

serve as the tool of the national government and yet find the career of Prefect attractive.[1]

The Maire. The legal basis for choice of Maires by the Commune Councils is a provision of the municipal Act of April 5, 1884. Such choice may be regarded as a republican, as distinguished from an imperial or monarchical, system. The imperial system was unrestricted choice of the Maire by the national government. Under the monarchical system, the Maires were selected from among the Councillors by the national government. As may be seen, the existing republican practice represents an advance in the direction of local self-government.

The national government may by decree remove a Maire. In this event, the Maire is ineligible for the period of a year, unless a new Council is elected in the meanwhile. Moreover, the Minister of the Interior may suspend the Maire for three months, and the Prefect may suspend him for one month. At the same time, legal provisions to some extent protect the Maire in these respects. Nevertheless, the general situation is an indication of centralization and is in marked contrast with Anglo-American tradition.

Maires receive no regular salary; but legal provisions allow certain payments for expenses, and fixed practice allows payment of certain indemnities. The Maire in a considerable number of instances proceeds to his position through the office of Deputy Maire. Also, he frequently, though by no means always, makes the position a stage of a political career on the way to higher places. That the position is held in no little esteem is indicated by the fact that members of the national Senate and Chamber of Deputies are glad to serve, if they can be elected, as heads of Communes. Indeed, the approximately thirty-eight thousand Maires are sometimes said to rule France. They form an Association of Maires, whose procession at their annual meeting is a picturesque event. In terms of numbers, the fact should be recalled that the overwhelming majority of Communes are in area and population minute. At the same time, the differences that would be expected between the Maire of a small rural community and the Maire of a large modern industrial city by no means exhaust the variations that occur. In the result, there are noblemen and laborers, demagogues and leading citizens, illiterates and university professors, communists and reactionaries.

Employees of the Departments and Communes. As has been

[1] Cf. Hauriou, *op. cit.*, p. 131.

seen, many government employees, whose national and local roles are by no means always easy to distinguish, are associated respectively with the Department and the Commune. At the head of these groups stand the Prefect and the Maire; and, in general, the extent to which executive agents are subordinate to Prefect or Maire in his local capacity marks the extent to which the agents are agents of local government as distinguished from local agents of national government. Whatever the predominating character of the relationships, executive agents of the Departments and the Communes consist of the staffs of the Prefects and Maires respectively and of other employees of the Departments and the Communes. The number of agents in any given area naturally varies in considerable measure, but, generally speaking, the agents of all the Departments and of the larger Communes constitute in each case a small army.

Department Agents. Each Prefect has associated with him a kind of intimate political family which, as in the case of the analogous institution connected with national Ministers, is known as his *cabinet*.[1] All the members are chosen by the Prefect himself, who is free to select anyone he desires. The Cabinet Chief is in reality a sort of private secretary. He not infrequently becomes a Sub-Prefect.

Previous to 1926, there was associated with the Prefect, as has been seen, an administrative agency known as the Prefectoral Council.[2] In the first place, this Council was a consultative body; but in this capacity it was relatively unimportant. In a second and much more important aspect, it served as an administrative court, with the Department as its area of jurisdiction. Since 1926, there have been only 22 Prefectoral Councils. One of them is a Council for the Department of the Seine, the others being regional organs. The Councils have practically lost their consultative character, with the result that they are almost wholly judicial tribunals.

The position of Secretary General in the Departments was established at the beginning of the Napoleonic era. Since that time, holders of the position have had a checkered career. Originally, they were not unlike present-day Cabinet Chiefs; but, just as the Prefects have tended to become the *political* heads, so the Secretaries General have more and more become the *administrative* heads of the Departments. The position of Secretary General has, as a matter of fact, been several times abolished

[1] Cf. p. 122, *supra*.

[2] Cf. p. 191, *supra*.

and re-established. For example, at the time of the financial crisis in 1926, the Secretaries General were by decree abolished in seventy Departments as a measure of economy. Three years later, they were re-established by Parliament at the proposal of the same ministry that had abolished them. Their status is in most respects similar to that of the Prefects. They are chosen, removed, suspended, and pensioned by presidential decree, the real decision belonging to the Minister of the Interior. They are the recognized substitutes for the Prefects, when the latter are for any reason absent or otherwise unable to perform their duties. However, the Secretaries General are, as has been suggested, primarily administrative heads of the Departments. They are general directors of the staffs of the Prefectures, organized into divisions and bureaus in a manner similar to the organization of the national Ministries. Thus, they are, in effect, a bond connecting the political and routine executives of the Department.

Commune Agents. The staff of the Maire naturally varies with the size of the Commune. It is not very extensive in the small Communes, which, it will be remembered, constitute the large majority. Indeed, in these, the complete staff consists of a Secretary, who corresponds in a general way to the Secretary General of the Department. The position of Secretary in the small Communes has traditionally been held by the local schoolmaster; but this practice, while common at present, is apparently not so widespread as formerly. In all cases, the Secretary is chosen freely by the Maire. His salary is an expense imposed on the Commune by law. Political considerations do not often play much part in selection of the Secretary, for the effectiveness with which the Communes are governed depends largely on the ability of this official. In the larger Communes, the Secretary is the general director of a staff that is a formidable establishment. In such cases, the Deputy Maires serve as heads of administrative departments.

Status of Local Employees. In the Departments, the status of executive agents is regulated by an Act of 1920, except where provisions of other Acts prevail; and, in Communes with a population of more than 5,000, establishment of a merit system is by an Act of 1919, as amended by subsequent Acts and supplemented by executive orders, required for appointment, promotion, and discipline of Commune agents not covered by other legal provisions. The existing situation in the two areas is, generally speaking, the same. Salaries are paid, and arrangements for

pensions are made. Positions are obtained through competition, which is open to both sexes. Promotion is made by a roster in accordance with definite principles. Suspension, removal, and discipline are surrounded with various safeguards. Finally, redress may be sought and obtained through the processes of administrative justice.

4. THE FUNCTIONS OF LOCAL GOVERNMENT

The Deliberative Function

Analogy between Parliament and Local Councils. Consideration of the functions of French local government involves, from the nature of the case, consideration primarily of the functions of local councils. As has been seen, local executive agents are, in reality, local only in so far as they carry out decisions of local councils. According to French authorities, decision in local government, which is followed by execution, is preceded by deliberation. Hence, deliberation, in other words, the activities of deliberative bodies, that is to say, the deliberation of local councils, is the primary function of local government. French students readily accept the proposition that local councils share with Parliament the characteristic of being *deliberative*. However, they do not normally draw comparison between the national legislature and lesser assemblies. More particularly, the view that local councils make law is distinctly distasteful to most French students. On the other hand, aside from this first great function of all modern legislatures, local councils are freely enough recognized in France to perform functions corresponding to the other two great functions of national legislatures,—namely, administration of public finance and control of the executive.[1]

Non-Financial Activities. The activities of French local councils, aside from the administration of public finance and control of the executive, are of several kinds. In the first place, councils exercise a certain amount of elective or appointive power. Thus, as has already been seen, the Department Councils not only form part of the Senatorial Electoral College but also elect the Department Committees; and the Commune Councils choose Maires, Deputy Maires, and delegates to the Senatorial Electoral College. The Department Council appoints certain of its members to various bodies on which the Council is entitled

[1] Cf. p. 157, *supra*.

to representation; whereas the Commune Councils likewise appoint various members of administrative commissions and the like. Such activities are commonly regarded as executive in character, a fact which merely serves to show that analogy between local and national government is not always very close. In the second place, local councils formally express their views in respect of various matters of a public character. Sometimes, this expression of opinion takes the form of advice. For example, the national government not infrequently asks the opinions of the councils. Indeed, such procedure is for certain matters required by law, though the advice naturally need not be followed. Moreover, the local councils regularly formulate resolves on questions of interest, especially on economic questions. In the case of the Communes, these questions must fall within the regular sphere of power of the Councils; but this is not true of the Departments. In both cases, legal provisions stipulate that the questions must not be *political* in character. In this last respect, the councils not infrequently disregard the law. Indeed, it has been said that the best discussions in the councils are those that are forbidden.[1] As a matter of fact, it is difficult to see what real objection there is to such harmless procedure; and yet annulment of illegal action, especially where the vote is critical of the existing ministry, is secured by agents of the national government. In the last place, the most important decisions of local councils take the form of resolutions having the force of law concerning local affairs proper. These affairs are fewer in the case of the Departments than in the case of the Communes. In the first respect, they fall traditionally into three classes,—maintenance of buildings and other property, construction and management of roads and other means of communication, and public welfare. In the case of the Communes, the affairs are numerous and greatly varied, though large and small Communes naturally differ in this respect. Examples of communal activities include construction and management of public works, administration of Commune property, and direction of municipal public services.

Council Procedure. In the procedure of French local councils, a large measure of initiative is exercised by the Prefect and the Maire. More specifically, the program of business is prepared by them, or, in reality, by their staff. In the case of the Departments, a provision of law requires that the Prefect shall formulate

[1] Jules Véran, *Comment on devient député, sénateur, ministre* (8e éd., Paris, 1924), p. 34.

his opinion in respect of every item of business coming before the Council. This provision has been interpreted to mean that all matters on the program of business must be initiated by the Prefect. Even concerning questions arising in the course of a sitting, the Prefect must give his opinion. Since 1926, the Prefect's reports concerning the program of business, which previously were distributed to Council members a week before the opening of a session, are required to be submitted to the Department Committee at least ten days before such opening. Moreover, in addition to specific reports, the Prefect must present annually to the Council a comprehensive report on the general state of affairs in the Department. In the Communes, the initiative of the Maire is based on custom. In spite of the absence of legal stipulation corresponding to that which prevails in respect of the Prefect, nothing could be more natural than that the items of the program of business should be studied by the Maire and that he should formulate his views concerning them.

Council procedure is on the whole simple and business-like. For preliminary study of questions coming before the council, considerable use is made of committees. In their investigations, the committees are naturally guided and influenced by civil servants; and the council as a whole relies largely on the views of its committees. In the result, business is handled with dispatch.

Local Finance

The Local Budget. The administration of local finance in France, though some of its technical details involve no little complication, is, in its general outlines, relatively simple. Basic decisions are, in accordance with democratic theory, made by the representatives of the people, that is to say, by local councils. These bodies naturally concern themselves with raising and spending money. The Departments and Communes are required by law to have budgets. These budgets, in accordance with principles noted in respect of initiative of other council business, are prepared by the Prefect and the Maire, or, in practice, by civil servants. The budgets must, of course, be voted by the councils. In the Departments, a preliminary examination of the budgets is made by the Department Committee. In the councils, the procedure follows the same general lines as in connection with other kinds of deliberations. The councils first concern themselves with income, and then authorize expenditures.

Local Revenue. Several sources of local income exist. The whole matter is regulated by law at great length. Thus, a detailed list of the sources recognized by law as belonging to a Department would include some twenty items. A similar list for the Communes would be even longer. A few examples of sources of revenue, in respect of both areas, include taxes of various kinds that the localities are empowered to lay, fractional parts of income from certain national taxes, contributions and subventions, legacies and other gifts, income from local property, proceeds from alienation of local property, profits from municipal trading, and loans. Nevertheless, the amount of money that local councils are free to expend is not extensive. Indeed, the fact that local income is strictly limited is the basis for the council practice of voting revenue before voting outlay. This reversal of the order practiced by the national government is to be explained by the fact that the localities, unlike the national government, cannot assume in principle that money will be available for whatever expenditure is decided to be in the general interest. A closely connected consideration of importance is the fact that many particular items of local revenue are by legal stipulations ear-marked for specific purposes. These items are more numerous in the Departments than in the Communes. In the one case as in the other, the practice is contrary to what is usually considered sound public finance. The prevailing consideration is that of economy, the allocation of revenue to specific purposes being regarded as calculated to avoid possible extravagance and waste.

Local Expenditure. Expenditures authorized by local councils fall into two classes,—namely, mandatory and optional. In the case of the Department, there are some 12 categories of mandatory expenditure, which constitute some 75 per cent of the whole outlay. In the Communes, an even higher percentage of expenditure is mandatory, optional expenditure being definitely exceptional.

Finance and Control. Control over local budgets by the councils is very effective. The Prefects, Maires, and local financial agents must submit their accounts to the councils; and the councils are required to discuss these accounts promptly. This gives rise to control by the councils over local executive activity. When the councils have discussed the accounts, higher authorities audit and approve them.

5. THE POWERS OF LOCAL GOVERNMENT

Legal Sources of Local Authority

General Statutes. French agencies of local government, like local agencies in other countries, derive from legal provisions their existence and all the authority they possess. These legal provisions are of several varieties. On the first plane stand Acts of Parliament. In turn, the provisions of these Acts are, as might be imagined, either general or special in character. General provisions apply to one or more classes of local agencies. Outstanding examples of such general Acts are the Act of August 10, 1871 on the Departments and the Act of April 5, 1884 on the Communes. They are comprehensive organic Acts. With little exception, they apply respectively to all the Departments and Communes in France. Indeed, their stipulations regulate the agents, functions, and powers of these communities in such a far reaching way as to result in a high degree of uniformity; and, in turn, criticism of this uniformity is often made in France. This is somewhat less true of the Departments, where the differences between the several Departments, though not inconsiderable, are not so great as in the case of the Communes, where a uniform system of government for small hamlets and large modern cities is manifestly too rigid.

Special Statutes. A considerable amount of minor statutory legislation dealing with French local government is to be found in special Acts of Parliament. Their provisions apply in various exceptional ways to particular agencies or localities, instead of being applicable on a general scale.

Executive and Administrative Regulations. French statutes dealing with local government tend to follow the normal pattern of French Acts of Parliament [1] and to possess the characteristic of being couched in general terms, the principles involved being applied through orders of various kinds issued by executive and administrative agents and organs of national government. Hence, such orders play an important part in regulating local government and its activities.

Judicial Decisions. Finally, mention may be made of another kind of legal principle that regulates local government in inter-

[1] Cf. p. 174, *supra.*

esting and important ways. This is the legal principle that is established by judicial decision, especially by decision of the Council of State. Such principles go to make up what is known as the *jurisprudence* of the Council of State. They are, somewhat as are principles of the English Common Law, "judge-made law," though theoretically they are merely the interpretation of statutes and orders.

Local Government and Administrative Law. All legal provisions regulating the organization, functions, and authority of French local government—general and special statutes, executive and administrative orders, and the jurisprudence of the Council of State—form a part of French Administrative Law. This law is by definition composed of all rules determining the organization, functioning, and authority of administration; and, since local government is *administration,* rules regulating it are a part of Administrative Law.

Control of Local Government

Tutelle Administrative. The extent of the authority of French local government is, it may be repeated, determined by various legal provisions, that is to say, by various of the provisions of Administrative Law. The theoretical principle is exceedingly simple. The law states that the Department Council shall manage the business of the Department and that the Commune Council shall regulate the affairs of the Commune. Such a statement of principle, however, not only fails to suggest the difficulty of determining what the business of the Departments and what the affairs of the Communes are; it ignores the modern tendency, which is especially pronounced in France, for the public as a whole, acting through national government, to be increasingly concerned with government and its activities as a whole and, accordingly, with local agencies and their activities. This tendency manifests itself through the phenomenon of *control.* In the French view, control in the general interest by the national government over local government is necessary, in order to avoid what would otherwise be the alarming situation of France abandoned to the whims of 90 Department Councils and 38,000 Commune Councils. This control is, in France, the basic characteristic of local government. It is currently called "administrative guardianship," the expression suggesting that local communities, like children not yet grown up, are not capable of looking out for themselves. The control takes several forms.

Judicial Control. The very fact that all agents and organs of local government derive their authority from provisions of law involves a certain amount of control. The agents and organs must not exceed their legal authority.[1] Since in practice legal provisions serve as limitations on government only when applied, the control involved brings the judiciary into play; and the control is frequently known as *judicial control.* The phenomenon is familiar both in England and America, the chief difference being that the courts concerned in France are administrative courts. However, in France, the typical control is not so much that by administrative courts as by active administrative agents and agencies.

Decision and Execution. In connection with administrative control of French local government, sight should not be lost of the distinction between deliberative and executive agents. Control of the deliberative agents, that is to say, of the councils, involves control of their decisions. However, in practice, the decisions must, of course, be executed; and executive agents are likewise subject to control.

Definitive Decisions and Decisions Requiring Approval. From the point of view of administrative control, the decisions of local councils fall, generally speaking, into two classes. The first class consists of decisions which require the approval of a higher authority. Without such approval, the decisions are not binding. The grounds for disapproval need not be legal in character. Refusal to approve may be based wholly on grounds of policy, the implication being that the decision is regarded as unwise from the point of view of the general interest. In this respect, an important practical consideration is the fact that positive approval is not necessary. On the contrary, "silence gives consent," in the sense that approval is assumed to have been given if disapproval is not expressed within a fixed legal period. The decisions falling into this first class of decisions requiring approval of a higher authority are *enumerated* by law, being less numerous for the Departments than for the Communes. All other decisions fall in the second class, and are known as *definitive* decisions. They may be defined as decisions that become binding if not disallowed on legal grounds by a higher authority within a certain period. They may not be annulled as being merely unwise. Annulment, it may be seen, of decisions of this kind is in a sense a case of anticipating judicial action, that is, action by administrative

[1] Cf. p. 196, *supra.*

courts; for, after the end of the legal period within which annulment by administrative authority is possible, an individual affected may seek annulment in these courts.

Control and Centralization. The measure of real local autonomy does not consist of possible or theoretical control but of actual control. In practice, control in France is pervasive and continuous; and the amount of genuine local self-government is small. This is true in spite of the appearance of things, as suggested by the concept of definitive decisions. These decisions, involving by definition a broad residual sphere of power within which local action may be annulled only on legal grounds, would seem to allow considerable freedom for unwise and impolitic acts to be performed without control. However, it is at this point that the practical importance comes in of the necessity for decisions to be executed. Decision may be free, but execution is subject to control. Since finance is at the base of all control, the far reaching potentiality of control of execution is especially manifest in connection with the expenditure side of budgets. After all, practically every function of any interest or importance involves the spending of money. Hence, an estimate of expenditure must be inserted in the budget; and not only is the sphere of optional expenditure very restricted, but, in the case of the Communes, control involves considerable power of reduction and disallowance, even in connection with optional expenses. Further control is involved in the audit of accounts. Again, an anticipated expenditure, if it involves capital outlay, may well necessitate a loan. In such a case, not only does liquidation of the loan involve regular budgetary appropriation subject to control, but authority to float a loan may be made by the council only when the loan is subject to various restrictions. In the case of the Departments, final decision to proceed by loan may be made by the Council only when the loan is to be amortized within thirty years through use of the Department's own revenue. Otherwise, the national government must through administrative decision give formal consent. The situation in the Communes is similar, but the restrictions are more rigid and detailed. Thus, in general, control in the matter of loans goes far towards offsetting freedom of decision in respect of an activity for which a loan is required. Moreover, a free decision, such for example as one to construct a public building, may be subject to other kinds of control in the execution. Thus, if land has to be taken through exercise of the right of eminent domain, control of a

higher authority exists; and the necessary bids on the work are likewise subject to control. Generally speaking, all local acts involve in practice some control. To this should be added the fact that there exists a certain amount of what is called in France *control of personnel.* Though, as has been seen, Department and Commune Councils are directly elected by universal suffrage and Maires are elected by the Commune Councils, the principal executive agent of the Department, the Prefect, is, it will be remembered, appointed by the national government. Individual members of councils may be removed; and Commune Councils, though not the Department Councils, may be suspended. Both kinds of council may be dissolved by action of national administrative officials. Such considerations, along with various other aspects of administrative guardianship, form the basis for the traditional judgment that France is the most highly centralized of the great free countries of the world.

PART III. POLITICS AND PARTIES IN THE THIRD REPUBLIC

CHAPTER IX. RIGHT VERSUS LEFT IN FRANCE

1. FRENCH POLITICAL GROUPINGS

Parties and Practical Politics. A realistic account of French institutions ought not at any point to fail to assume the existence of political parties. A description of institutions which neglected to recognize that institutions are influenced in many directions by political considerations would be a theoretical law-book account.

Complexity of French Politics. The multiplicity of political groups in the French Chambers has already been noted.[1] According to the usual accounts, the existence in France of many groups and parties is responsible for a high degree of complexity in French politics. Such an account undoubtedly contains a large element of truth; and the influence and importance of the failure in France for a two-party system to be developed have been several times mentioned. However, the resulting complexity ought not to be exaggerated. For example, the importance of distinguishing political groups and study groups has been pointed out.[2] A distinction has been implied between *group* and *party* that ought now to be further stressed.

Political Groups and Parties. Strictly speaking, the word *party* is in France correctly applied to political organizations in the country at large; and the word *group,* in the sense of *political* group, refers properly, as has been seen, to a number of members of one or the other of the Chambers bound together more or less closely by certain political affiliations and for certain political purposes. Correspondence of political organizations in the country and political associations in Parliament is the exception —though the exceptions are of particular importance—rather

[1] Cf. p. 154, *supra.* [2] Cf. *ibid.*

than the rule. In the result, one or two parties exist to which no groups correspond, and there are various groups to which there are no corresponding parties. In other words, no necessary connection exists between political parties and political groups. However, in respect of one important aspect of terminology, discussion of political parties as they exist in the country at large must presuppose the existence of political groups in Parliament. As has been seen, the political groups in a Chamber sit in a semicircle in front of the presiding officer, ranging from radical on the president's left to reactionary on his right.[1] This simple consideration of the physical position occupied by the several political groups in Parliament furnishes the basis for the far reaching classification of the political parties in the country, together with their political tendencies, as Left or Right. The correspondence of the terms to the particular tendencies was in the beginning naturally an accident; but, once established at the time of the Revolution, the seating arrangement and its political implications have continued to the present day.

2. BASIC ISSUES

Liberalism vs. Conservatism. The identification of Left with *liberalism* and of the Right with *conservatism* is apparently inevitable; but whether the identification is helpful to understanding is, to say the least, doubtful. Indeed, in contemporary usage, Left and Right are less ambiguous terms than *liberalism* and *conservatism*. With the passing of time, the two latter terms have, through party conflicts, changed, and to some extent even exchanged, their meanings. In France at present, the label *conservative* has come to be in considerable measure an opprobrious epithet which would scarcely be adopted voluntarily by a political party, whereas *liberal,* though it traditionally possesses favorable connotations, has been appropriated by parties of reaction.

Political Revolution vs. Industrial Revolution. The suggestion has been made in France that the simplest distinction between Right and Left is to be found in the matter of rejection or acceptance of the French Revolution.[2] According to this view,

[1] Cf. p. 155, *supra.*

[2] Cf. André Siegfried, *Tableau des partis en France* (Paris, 1930), pp. 57 *et seq.* This work appeared in English as *France: A Study in Nationality* (New Haven, 1930).

the important practical political questions to which to apply the distinction are the primary matter of regime and the matter of the two great forces, spiritual and physical, that form the bases of any regime, namely, the Church and the Army. Thus, in the first respect, the Right, it is said, ought to be thought of as monarchical, the Left as republican. This undoubtedly states one aspect of the traditional distinction between Right and Left; but, as an indication of fundamental difference at the present time, it is of much less value. For one thing, the question of monarchy versus republic is not at present a very burning issue. Fairly early in the Third Republic, as will be seen,[1] members of the Right found no great difficulty in accepting the Republic. It was this which caused Léon Bourgeois to exclaim: "You have accepted the Republic! Do you accept the Revolution?" At that time, in other words, the primary matter of regime had become subordinate in importance to other aspects of the Revolution. Here again, in terms of tradition, the distinction is clear enough. For example, in the matter of attitude towards the Church, the Right has regularly supported the Church, the Left has been anti-clerical. Even at the present day, the religious question is, as will be seen, a potential issue of much importance in French politics.[2] Concerning the difference between Right and Left, Professor Joseph-Barthélemy says:[3] "Perhaps the surest criterion would still be opinion on the subject of the Churches in the State, of religious liberties, of relations with the Vatican, and so on. Religious questions have been tearing our country for centuries." Therefore, attitude towards this question is a simple and accurate test of membership in the Right or Left, though it is a formal test in the sense that it offers no explanation of why people disagree on this issue. Likewise, the Right is to be thought of as traditionally supporting the Army, the Left as anti-militarist. However, in this respect, it is interesting to note, a tendency from time to time manifests itself for the two sides to exchange positions, or, at the least, for the Left to assume a different attitude towards the Army. In summary, then, with respect to the three basic matters of attitude towards regime, towards Church, and towards Army, the first has largely, though not wholly, ceased to be an issue, the second has largely, though not wholly, remained a constant issue, and

[1] P. 245, *infra.*
[2] Cf. p. 231, *infra.*
[3] *Op. cit.*, p. 44.

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the third has largely, though not wholly, resulted in a change of positions. One clue to this situation can be found in the fact that, since the great French Revolution, certain important effects of the Industrial Revolution have come to be strongly felt. Differences between the Right and Left may be seen in terms of each of these revolutions and of both together.

Political Issues: Regime. The republican regime in France is, as has been seen, identified with political democracy. Political democracy being an accomplished fact, the republican regime is accepted as the established system. This is the simple sense in which the question of regime is not at present a vital issue.[1] However, from a negative point of view, if a strongly supported movement should arise for the re-establishment of monarchy or if a movement towards dictatorship should gain real strength, both republicanism and political democracy would become issues of paramount importance. At the same time, the fact should be remembered that a system of government is not an end in itself. It is important primarily in terms of the end it undertakes to serve. Monarchy originally served principally the interests of a relatively small class; and it was opposed, just as republicanism was supported, by those who claimed to give principal importance to the interests of the large body of the people. Here, however, the effects of the Industrial Revolution come in. The supporters of interests of the body of the people have attempted to employ the potential advantage afforded to them by political democracy to deal in such a way with economic and social problems created by the Industrial Revolution as again to further the interests of the body of the people. On the other hand, those who desire to support primarily the interests of the few oppose such use of power. In the numerically unequal contest, the few are able in considerable measure to offset inferiority of numbers through certain inherited economic and social advantages. Some of this class trust to these advantages to give them control of the existing regime, whereas others stress somewhat more the desirability of a change. In other words, the question of system of government is secondary to the question of the economic and social ends sought to be accomplished through government.

Political Issues: Church. From the nature of the case, religious questions are as such largely independent of economic and

[1] In connection with this issue in the early years of the Third Republic, cf. pp. 79-95, *supra,* and pp. 232-235, *infra.*

social questions.[1] Hence, although members of the Right are in most cases both supporters of the Church and opponents of solutions that are attempted by the Left for social and economic questions, there is no necessary logical connection between the two attitudes. That a distinction can in practice be made is demonstrated by the fact that some uncompromising supporters of the Church are men of bold social and economic views. This combination is not widespread in France; but, as will be seen,[2] it does exist, and no little interest attaches to the possibility that, in more propitious circumstances, its influence may spread.

Political Issues: Army. Historically, the instinctive opposition of the Left to the Army has been based on the not unfounded feeling that the Army has been employed as a bulwark in the protection and furtherance of the interests of the privileged few.[3] However, such considerations as the democratization of the Army and the tendency for the Left to become politically the strong side have resulted in certain indications that the Left is to some extent supplanting its traditional distrust with a measure of confidence in the possibility that the Army may be made to serve the ends, internal and foreign, which the Left feels to be in the interest of the masses.

Interests of the Few vs. Interests of the Many. Distinct and acute differences between Right and Left are easily observable. In other words, the existence of Right and Left is a fact evident to everyone. Explanation, on the other hand, is an entirely different matter. Determining factors are, it must be clear, exceedingly complex. Therefore, to stress one consideration to the exclusion of others greatly risks oversimplification. However, through the whole complexus of elements connected with the French Revolution and the Industrial Revolution, one thing does run like a thread. At all times, certain people, for whatever reasons more specific than the matter of interest, interpret the general welfare in terms of the interests of the few, and others in terms of the interests of the many.

[1] For details of controversies concerning the religious issue in the course of the Third Republic, cf. pp. 238-239 and pp. 250-253, *infra*.

[2] P. 271, *infra*.

[3] For the appearance of this issue in the course of the history of the Third Republic, cf. pp. 247-250 and pp. 254-255, *infra*.

CHAPTER X. PARTY DEVELOPMENT IN THE THIRD REPUBLIC

1. THE HEROIC PERIOD: 1871-1879

Inauguration of the Constitution

Monarchy vs. Republic. The history of political parties in the Third Republic begins with a relatively simple situation. Opposition of Monarchists and Republicans represented, of course, a fundamental division. As has been seen,[1] the issue between these two camps was, at the time of the election of the National Assembly of 1871, obscured by the necessity for a decision concerning war and peace; but, once this question had been decided, the lines could be more distinctly drawn. The issue of republic versus monarchy served to introduce much clarity into the political scene in France; and this remained the situation until the Republican forces were definitively victorious. It was "the heroic period, with which the name of Gambetta has remained associated." [2]

The First Parliament. The first parliament under the Constitution of the Third Republic convened in March of 1876. As a result of the election of 75 life Senators in 1875 by the National Assembly and of the remaining 225 Senators in January of 1876, the division between Right and Left was almost equal, with a minute advantage for the Right, that is to say, for what was in general the side of the Monarchists. Thus, by a very narrow margin, the anticipations of the Monarchists were fulfilled. In other words, a conservative Senate, together with a royalist President of the Republic, MacMahon, was placed over against the popularly elected Chamber of Deputies. However, the Right had not wholly anticipated the sweeping victory of the Left in the elections of Deputies that took place in February

[1] P. 81, *supra.*

[2] Cf. Bourgin, Carrère et Guérin, *Manuel des partis politiques en France* (2e éd., Paris, 1928), p. 9.

and March of 1876. Indeed, the Monarchist camp was flabbergasted. The Republicans secured more than two-thirds of the seats in the Chamber. In these conditions, President MacMahon undertook to accept the implications of the parliamentary system of government, deciding to take a ministry from the majority. Though he refused to see Gambetta, he charged moderate Republicans, first Dufaure and then, about nine months later, Jules Simon, to form ministries. However, these ministries, taken from the right wing of the majority, could not command united support of the Left; and, with this situation aggravated by the opposition of the Senate and of MacMahon and his friends, their lease on power was shortlived.

The Seize Mai Incident

Jules Simon and the Religious Issue. The conditions in which Jules Simon resigned as Prime Minister are of more than passing interest and importance. Simon's position was inherently weak because of strained relations both with the Left and the Right; but the immediate cause of his downfall was the religious issue, always a potential occasion for deep political division in France.[1] In March of 1877, the Pope urged the French clergy, in protest against an anticlerical law just passed in Italy, to bring pressure on the Government to act in defence of the independence of the Papacy. A petition to this effect addressed to the French Chambers was circulated by French bishops. As a result, the Catholics were accused by Republicans of wishing to drive France into war with Italy. For several weeks, agitation continued that even threatened the equilibrium of international relations in Europe. Gambetta, eloquent leader of the Left, revived as a war cry a formula from the Second Empire: "Clericalism! That is the enemy!" The clergy was undoubtedly unrestrained and violent in its campaign. Simon himself was by a section of the clergy and the clerical Press attacked as a faithless Minister of the State. The majority of the Chamber of Deputies, over objection of the Right, passed in the first week in May a resolution calling on the ministry "to suppress such antipatriotic agitation." This situation forced Simon, who was attempting to steer a middle course, to take a position further to the Left than he desired and than MacMahon considered tolerable. The President thereupon decided to dismiss Simon. However, MacMahon was not willing for the religious issue to appear as the immediate cause of dis-

[1] Cf. p. 229, *supra*.

missal; so he waited for a pretext of a different kind. Finally, on the basis of certain disagreements between the Prime Minister and the Chamber in connection with pending bills concerning local government and concerning the Press, MacMahon wrote to Simon on May 16 regretting the Prime Minister's failure to take what the President considered a more positive position. The letter employed a concept invoked by Louis Napoleon in 1849,—namely, "responsibility to France" on the part of the President, as contrasted with the ministerial responsibility that characterizes the parliamentary system of government. Jules Simon resigned. The Republicans immediately protested against what was in effect a dismissal, associated with personal anti-parliamentary government. The Chamber of Deputies passed a resolution the next day declaring violation of ministerial responsibility and of parliamentary government to be contrary to "the first condition of that government of the country by the country which the Constitution had as its object to establish." Later the same day, MacMahon's principal adviser, de Broglie, formed a ministry of the Right. Immediately after its appearance before the Chambers the next day, Parliament was adjourned for a month. During this vacation, the division between Left and Right became clearly defined; and, on the day that Parliament reconvened, the ministry, clearly in the minority, announced the step already anticipated,—namely, dissolution of the Chamber of Deputies. The Senate a few days later consented to the dissolution.

Dissolution of the First Chamber of Deputies. Dissolution of the French Chamber of Deputies in June of 1877 is known as the *seize mai* (May 16) incident. This was the day on which Jules Simon had resigned. The ministry of de Broglie, formed the following day, was also known as the *seize mai* ministry. The whole incident was represented by the Republicans as an attempted *coup d'état* on the part of MacMahon; and this attitude entered into the tradition that has in large measure been responsible for the fact that dissolution, an integral part of parliamentary government as practiced in England, has not since 1877 been employed during the Third Republic.[1]

Election of the Second Parliament. The elections were set for October. They were preceded by a highly vigorous campaign. Even the President of the Republic entered the political arena, on the side of the Right. The ministry made a thorough-going change of Prefects and Sub-Prefects and brought pressure of the

[1] Cf. p. 113, *supra*.

strongest kind on them to secure the election of candidates from the Right.[1] One of these candidates wrote in a newspaper of southwest France: "We shall make of the Republicans a mess that dogs themselves will not want." On the other hand, the Republicans, put on the defensive, maintained remarkable discipline. Those of them who had belonged to the previous Chamber—known in history as "the 363"—formulated a single program. Gambetta, in the course of a speech in the Chamber at the time of the reconvening of Parliament in June, had uttered this prophecy: "We depart 363; we shall return 400." Though this prediction turned out to be slightly too optimistic, the Republicans scored an undoubted victory.

MacMahon Gives In. The de Broglie ministry did not immediately disappear as a result of the elections of October; but, within a few weeks, the Prime Minister, faced with internal disagreement in his Senate majority, resigned on behalf of his Cabinet. However, MacMahon was not quite yet ready to accept the implications of Gambetta's electoral campaign assertion that when the country had spoken the President would be obliged "to give in or get out." A "business ministry," taken from outside Parliament and composed of men of the Right, was formed; but the Chamber of Deputies refused to enter into relations with it. It lasted less than a month. Finally, MacMahon, after consideration of several expedients including a military *coup,* decided to give in. Early in December, he invited Dufaure to form a ministry.

MacMahon Resigns. Formation of the Dufaure Cabinet marked the end of the *seize mai* incident. Parliamentary government had triumphed. However, though the Republican Party had won a notable victory, it had yet to consolidate its position. Two of the three institutions of national government, the Presidency of the Republic and the Senate, still belonged to the Right. The first opportunity for the Left came a year later, when, in January of 1879, election of a third of the number of Senators took place. The Republicans secured slightly more than eighty per cent of the seats, thereby gaining a comfortable majority in the Senate as a whole. MacMahon, being thus isolated, gave his resignation before the end of the month; and Grévy, a Left Republican, was immediately chosen in his stead. The Republicans were in control of all three national institutions; and this control has in effect continued to the present day.

[1] Cf. p. 144, *supra.*

2. REPUBLICAN DIVISION: OPPORTUNISTS VS RADICALS: 1879-1893

Ascendancy and Decline of Opportunism

The Republic Victorious. The year 1879 marks the end of "the heroic period" of French politics of the Third Republic. The success of the Republicans in their united defensive action meant definitive defeat for the Monarchy. Now, however, the Republicans displayed a characteristic that is a not uncommon phenomenon in all political history. They were united when on the defensive, frequently divided when on the offensive. Indeed, in the second respect, nothing could be more natural than that the division between Right and Left, when no longer resting on the uncertain matter of the regime, should reappear in the ranks of persons who had been victorious in the struggle, namely, the Republicans. There remained the all-important religious question and the only less important military question; and economic and social issues were crowding upon political issues as potential sources of deep-cut divisions. A second period, extending from 1879 to the World War, is a "period of Republican division." [1] This period, in turn, is to be subdivided into several shorter periods. The first of these extends from 1879 to 1893.

Ends and Means. The period between 1879 and 1893 includes the life of three Legislatures. These were marked by elections to the Chamber of Deputies in 1881, 1885, and 1889. The division at this time between Republicans took the form of opposition between an element known as Opportunists and an element known as Radicals. That this division was, however, merely a family altercation concerning the best methods of accomplishing agreed ends was demonstrated by the fact that any serious conditions, especially those conceived to endanger the regime, brought all elements of Republicans together in unified defence.

The Leadership of Gambetta. Until 1885, the Opportunists, though not forming a compact majority, succeeded, generally speaking, in guiding the course of events. They bent their energies towards carrying out what was regarded as the program of the Left. The actual leader, though only briefly in the position of Prime Minister, was Gambetta. He was accused by the Radicals of having abandoned the program of the Left, in favor of

[1] Cf. Bourgin et al., *loc. cit.*

a moderate opportunism. As a matter of fact, Gambetta himself furnished some grounds for the accusation. The Gambetta who had in 1869 proclaimed as his electoral platform the radical Belleville Program,[1] who had been in popular eyes the outstanding hero of the *seize mai* victory, and who, owing to his alleged extreme radicalism, had been responsible for no little of MacMahon's distrust of even moderate Republican ministries, regarded by the President with considerable reason as under the influence of Gambetta,—this Gambetta as early as 1877 had spoken of a desire that his party should "execute a halt" and of a conviction that "things should be taken one at a time." Ferry, an outstanding Republican leader, advocated a policy "consisting of not tackling all questions at the same time, of limiting the field of reforms, of eliminating irritating questions."

The "Great Ministry." The real desire of Gambetta was undoubtedly that of uniting the Left. This was rendered impossible not only by the uncompromising attitude of the Radicals but also by personal antagonisms among Opportunist leaders, including strained relations between Gambetta and President Grévy. These difficulties conditioned the course of events during the period of the general ascendancy of the Opportunists. The most striking result was a rapid succession of ministries, a situation that has come to be considered a characteristic feature of parliamentary government in France.[2] The Dufaure ministry that marked the victory of the Republicans over MacMahon was shortlived. Several short ministries further to the Left inaugurated the unstable march. Some ministries lasted for a few months, some for only a few weeks. Gambetta himself, who formed his only ministry in November of 1881, was able to remain in office for only two and a half months. In accordance with his hopes concerning unification of the Left, he attempted to form a ministry composed of the outstanding leaders of the several Republican groups; and, in anticipation of success, he spoke of "the Great Ministry." However, he was unable to secure the support of these leaders. As a result, he was compelled to fall back on a combination of little known young men. To these the appellation, "the Great Ministry," came to be applied by the

1 In 1869, Gambetta was triumphantly elected to the Legislative Body of the Second Empire, and became a member of the small Republican anti-imperial opposition (cf. p. 78 n, *supra*). His election platform became famous as the *programme de Belleville*. Among other things, it advocated constitutional revision, separation of Church and State, election of judges, sliding-scale income tax, and communal autonomy.

2 Cf. pp. 126-129, *supra*.

public; but the expression was, of course, employed in derision. Gambetta resigned when the Chamber of Deputies refused to change from the single-member constituency to the general-ticket electoral system.[1] Before the end of the year, the great popular leader was dead.

Jules Ferry. Between 1879 and 1893, there were more than fifteen ministries. The most prominent was that of Jules Ferry, which lasted from 1883 to 1885. Ferry's name is associated with two outstanding achievements of the time. He laid a basis for the whole French educational system; and he inaugurated the creation of France's colonial empire. In the second respect, he began the achievement at the time of a first and shorter ministry, just preceding that of Gambetta; and he completed the work during his longer ministry. On both occasions, he lost office on colonial issues. In this matter, he was opposed by a combination of the Right and the Radicals. Indeed, it was during Ferry's second ministry that the division between Opportunists and Radicals became most clearly defined. The Radicals supported the passage of various measures designed to complete realization of the Republican program,—such, for example, as laws on freedom of the press, on freedom of assembly, on democratization of municipal government, on divorce, on a general-ticket system for election of the Chamber of Deputies, and on military service. They asserted that the reforms realized were too moderate and the tempo too slow. They became bitterly opposed to Ferry, as they had been to Gambetta; and, under the leadership of the same bitter personal foe, Clemenceau, they found in Ferry's colonial policy, never genuinely popular, an issue on which they, in combination with the Right, were able to bring to an end the relatively long ministry of more than two years. The Right opposed Ferry on this occasion largely through personal hostility to him. This hostility represented the survival of bitter hatred which Ferry had aroused on the part of the Right in connection with reform of the educational system. The violence of emotions in the matter was, in turn, due to religion. The period of educational reform extended from 1880 to 1886. Ferry was connected with it first in his capacity as Minister of Public Instruction and later as Prime Minister. Primary education was made free and compulsory. More particularly, it was made non-religious. The priests were excluded. Teachers were to be recruited from normal schools, in which instruction was not to be religious. Members

[1] Cf. p. 145, *supra.*

of religious orders desiring to teach would be compelled to possess the same competence. Reforms were also proposed for secondary and for higher education. Ferry, wishing especially to weaken the position of the Jesuits, secured passage in the Chamber of Deputies of a provision forbidding the right of teaching to the members of religious orders not authorized by existing law. When the Senate failed to pass this provision, the order of Jesuits was by decree dissolved and driven from France; and a second decree required other unauthorized orders to request authorization. The orders, supported by lay members of high society, defied the decrees; and many members of the judiciary, rather than apply the law, resigned. The executive secured compliance by the use of force; and, though the original intention had been to distinguish between Jesuits and other orders, resistance resulted in widespread dissolution and expulsion, exceptions being of a minor character. Feeling naturally ran high, and political division was the more deep-cut.

Republican Discipline. The resignation of Ferry in March of 1885 was followed in October by elections for the Chamber of Deputies of the Fourth Legislature. For these elections, the Right was able to effect a considerable degree of unification. The death in 1883 of the Count of Chambord served to heal in large measure the breach between the Legitimist and Orleanist factions of the Monarchists. However, the Right presented itself not as a Monarchist group but as the "Conservative Opposition." They were able to take over from the Republican platform certain moderate planks, especially in the financial sphere, abandoned by Republican ministries. An effective cement was furnished by the feeling of "religious persecution." In these circumstances, the Right presented in the Departments only one list for the elections, held for the first time since 1871 under the general-ticket system.[1] On the other hand, the Republicans dissipated their strength through the presentation of two lists. In the result, the Right secured on the first ballot some fifty more seats than the Republicans. However, for the second ballot, Republican discipline was re-established, a single consolidated list being offered; and the elections were turned into a Republican victory. Nevertheless, the Conservative representation reached about two hundred, more than double the membership of the Right in the previous Chamber. The two Republican factions were almost exactly equal, each alone having about the same

[1] Cf. p. 80, *supra.*

representation as the Conservatives. The hegemony of the Opportunists disappeared; and during the Fourth Legislature no majority with any real degree of compactness was possible. The succession of shortlived ministries was resumed. With the elections of 1889, the relative strength of the Radicals became less; and one ministry, that of Freycinet, lasted from 1890 to 1892.

Republican Concentration and Policy of Appeasement. In general, in the intricacies of the situations resulting from the division of the Republicans into Opportunists and Radicals, one or the other of two combinations tended to prevail. The first, known as "Republican Concentration," resulted when the greater part of the two Republican factions could be brought into substantial agreement. The second combination was that of the "Policy of Appeasement." It was formed through support of the more moderate Republicans by a part of the Conservatives, on the condition of abandonment of anti-clerical measures.

Republican Scandals and Crises

Absence of Leadership. During the Fourth and Fifth Legislatures, the tempo of reform became decidedly slower. In the conditions, ministries confined most of their efforts to remaining in office. Such a situation, which has become proverbial in France, is particularly open to criticism as tending to render government weak through lack of genuine leadership. In the period under consideration, few far reaching laws were passed, the principal exception being establishment of a system of protective tariffs in 1892. On the other hand, three historical events—the Wilson scandal, the Boulanger episode, and the Panama scandal —had important political repercussions. Such crises are in part the cause and in part the effect of the intensity of French politics, which, in turn, gives to them much of their fascination.

The Wilson Scandal. Wilson was an expatriated Englishman, married to the daughter of President Grévy. In the course of an investigation during 1886 of an alleged traffic in awards of the Legion of Honor, it transpired, from certain letters which were discovered, that the President's son-in-law, who lived at the Elysée Palace, was implicated. A huge scandal resulted when the newspapers revealed to the general public what the political world already knew,—that Wilson had in numerous ways been using influence derived from his intimacy with the President, in order to further his personal business interests. A judicial prosecution was begun. Grévy stubbornly supported his son-in-

law; and, inasmuch as Parliament would have no relations with ministries chosen by Grévy and as Grévy was able to persuade no Ministers to accept office, the President found himself constrained to resign. The situation showed that a President who has aroused the animosity of Parliament may be destroyed, whatever the constitutional theory, through the inexorable logic of parliamentary supremacy.[1] In the instance under consideration, Ferry appeared to be indicated as successor to Grévy; but animosity against Ferry resulted in the election of a less strong and less notable candidate, Carnot. This outcome is one of several examples of the fact that France is reluctant to elevate to the Presidency a vigorous personality.[2]

The Boulanger Episode. The Wilson scandal occurred in the course of the Boulanger crisis. Boulanger was a young general of considerable personal attraction, whose military career in the colonies had not been without brilliance. He was a Radical, and, at the instigation of Clemenceau, became Minister of War under Freycinet at the beginning of 1886. He retained the same portfolio in the succeeding ministry. During this time, he managed to gain great popularity, his physical appearance on a spirited black horse becoming subject of song and story. The General had initiated his appeal through democratic acts and utterances. More especially, he showed himself solicitous of the well-being of the common soldiers. Furthermore, he buttressed his position, in the eyes both of the extreme Right and of the extreme Left, by a firm and even aggressive attitude towards Germany. Bismarck seized the occasion to create an incident; but his pretext was exceedingly flimsy, and, France remaining firm, he was compelled to give in. Anti-German feeling was aroused in France, and Boulanger's popular position was strengthened. He became the "General of Revenge." However, certain older heads in Parliament began to suspect this popular Minister of War of ambition for personal power; and, on the occasion of a change of ministry in 1887, they were able to secure the exclusion of Boulanger. The new ministry, in order to remove him from the center of his popularity, Paris, sent him to a corps command in a provincial city. Protests naturally arose; the General was at the time of his departure acclaimed at the station by an enthusiastic crowd; and a Boulangist Party was formed. This new party had as its center a small group of Radicals and an organization known as the League of Patriots. The Monarchists

[1] Cf. p. 257, *infra.*

[2] Cf. p. 108, *supra.*

and Bonapartists quickly joined, seeing in the movement the easiest way of furthering their own ends. Boulanger declared his intention of abolishing the parliamentary system; and his program was summarized in the slogan,—"Dissolution, Constituent, and Revision." The object was to establish a system with a single Chamber and an independent executive, somewhat as in 1848.[1] Boulanger, presumably, was to be Louis Napoleon. His followers adopted the expedient of presenting the General's name, though he was ineligible while on active duty, wherever a vacancy in the membership of the Chamber of Deputies occurred. The general ticket system was as if made to order for the purpose, a special election in a particular case giving rise to voting throughout a Department.[2] The most modern publicity measures were employed by the organization in charge; and successive victories were made to appear a plebiscite in favor of Boulanger.[3] However, it should be noted that no success was realized in the East and South, proverbial strongholds of republicanism. The seats gained were those previously held by the Right. This suggests that, in the context of political democracy, Boulanger was not a great danger to the Republic. At the same time, the atmosphere was tense; and the Wilson scandals were far from having a calming effect. Finally, in January of 1889, a special election was held in Paris. In spite of the opposition of Clemenceau, who, though originally an advocate of Boulanger, had become bitterly hostile to him, many Radicals supported the General; and he scored a smashing victory. His friends urged him to seize power, a venture in which, inasmuch as he would have had the support of a huge crowd of the populace in the streets, and as the troops and the police seem to have been sympathetic, he would probably have been successful. However, the General showed himself to be a man of little determination and decision; and the opportunity was missed. His opponents were more determined. Within less than two weeks, Parliament had passed an Act replacing the general-ticket system with the system of the single-member constituency.[4] A new ministry that came into office a few days later displayed considerable strength. The League of Patriots was dissolved; and the Senate was constituted a High Court for the trial of treason.[5] Boulanger received the intimation that he was to be arrested. He fled to Brussels, following his mistress, who had received a similar intimation. It was the end. His movement col-

[1] Cf. p. 65, *supra.*
[2] Cf. p. 143, *supra.*
[3] Cf. p. 145, *supra.*
[4] Cf. *ibid.*
[5] Cf. p. 98, *supra.*

lapsed almost immediately. His party, at the general elections in the autumn, secured only about 40 seats. The Republicans secured a solid majority, and the Republic was safe. Boulanger was in absence judicially condemned to perpetual deportation; and, in 1891, he committed suicide. The whole affair illustrated the strong latent appeal which Bonapartism, that is to say, strong, direct, personal government in a crisis has for the French; [1] but it also proved that political democracy, while not without vulnerability to vigorous sudden attack, is strongly and solidly founded. On this occasion, as has happened on others, the political system of French democracy and republicanism, namely, parliamentary government, tended to appear weak, slow, and inefficient. Its opponents have applied to it the opprobrious term *parliamentarism*. However, the attitude of France is that expressed in the Chamber by Clemenceau, addressing himself directly to Boulanger. "If it is the system of discussion which you conceive you are branding with the name 'parliamentarism,' be assured that it is the representative system, it is the Republic upon which you dare to lay your hand."

The Panama Scandal. In November of 1892, that is to say, in the year after the death of Boulanger, the Panama scandal burst upon the French people. The public learned for the first time what has continued in other countries as well as France to be accepted with varying degrees of cynicism and of indifference,—the relations between high finance, the Press, and politicians. Panama has been called "the most typical example." [2] The prestige of "the great Frenchman," Ferdinand de Lesseps, builder of the Suez Canal, was exploited in order to raise funds and form a company for the construction of a canal across the Isthmus of Panama. The task was one of extreme difficulty; and a great deal of money was expended, undoubtedly much of it inefficiently and wastefully. The company, with its funds running low, desired to float a loan; and it decided upon the use of a lottery. For this, an Act of Parliament was necessary. Steps in this direction were taken by the company in 1887. Difficulties were encountered; but they somehow were overcome, and the necessary Act was passed in 1888. However, the financial situation of the company became worse instead of better. Bankruptcy ensued; and certain creditors demanded the opening of an investigation against the directors. However, justice proceeded

[1] Cf. p. 57, *supra.*
[2] Cf. Raymond Recouly, *La Troisième République* (Paris, 1927), p. 170.

with an exceedingly slow step. The ministry knew that large sums of money had undoubtedly been spent at the time that the lottery Act had been pending before Parliament, but revelations would inevitably give rise to public scandal. Boulanger had just been elected in Paris. Moreover, there was considerable reluctance to accept the disgrace of de Lesseps, an old man nearing the end of what had been a glorious career. In the result, an investigation was not opened until the middle of 1891; and prosecution of the directors of the company was not ordered until more than a year later. The whole affair, no doubt in large part because of approaching general elections, was tried in the Press. There were certain theatrical attendant circumstances. Of certain Jewish bankers and financial agents believed to be implicated in the buying of votes, one committed suicide, and two others fled the country.[1] The Right not unnaturally made the most of things. Charges innuendoes, and rumors were bandied about in the Press and in Parliament. However, the end was largely an anti-climax. After many hearings, prosecutions, and trials, there were only negligible convictions. At the same time, from a political point of view, reputations suffered [2] and the regime in some measure lost prestige. Nevertheless, the Panama scandal, like the Boulanger crisis, demonstrated the fundamental vitality of parliamentary republicanism and the basic solidity of a system resting on genuine political democracy. Executive dictatorship and direct action will always present certain attractions in times of crisis, of maladjustment, and of discontent.[3] Indeed, an effective democratic system will display sufficient flexibility for stronger leadership to be possible in critical conditions, without real damage to the democratic basis of the system. Under such a system, the unfortunate appearance in the body politic of unsavory growths, like those manifesting themselves at the time of the Panama affair, will suggest salubrious reform rather than change of regime. In any event, the Right failed to profit in the French elections of 1893. On the contrary, their representation was reduced by about half, the Left naturally reaping the benefit. At the same time, far reaching change resulted. In the new Chamber, half the seats were filled by newcomers. A new period of Republican division ensued.

[1] A novel by Maurice Barrès, *Leurs Figures,* gives a most striking account of the Panama affair. The work, though marked by pronounced Boulangist bias, is a genuine masterpiece and deserves the attention of every student interested in French practical politics. The same is true of another novel by the same author, *L'Appel au Soldat,* which is concerned with the Boulanger episode. The two books form part of a trilogy, *Le Roman de l'Energie nationale.*

[2] Notably that of Clemenceau. Cf. p. 253, *infra.*

[3] Cf. p. 98, *supra.*

3. REPUBLICAN DIVISION: MODERATE BLOC VS. LEFT BLOC: 1893-1906

New Forces. With the virtual disappearance of the opposition between Opportunists and Radicals, the split in the ranks of the Republicans assumed, beginning in 1893, a different form. This modification was in considerable measure conditioned by the addition of two new elements to the Republican forces. One element was drawn from the Right, the other from the Left. In the first respect, there appeared a small group that marked the birth of a reconciliation of Catholicism to the Republic;[1] in the second, the effects of a rebirth of Socialism manifested themselves.[2]

The Ralliement. After some twenty years, the Third Republic appeared firmly established. During this period, Catholicism had for better or worse been closely associated with the cause of monarchy. Whatever the wisdom of such a course, its results had in the immediate sense been far from successful. Whatever case may be made out today for the view that continuation of the course would in the long run have had the best results, such continuation seemed to many at the time to be disastrous. In any event, the able Pope Leo XIII decided that a new policy should be attempted. Early in 1892, an Encyclical asserted that political opposition by the Papacy did not extend "to any particular form of government." It urged French Catholics to accept the Republic, distinguishing between authority of government, which ought to be obeyed, and particular laws, which, if bad, ought to be opposed and improved. The appeal of this policy was not wide. Only a minority of Catholics welcomed the opportunity to "rally" to the Republic. Of the approximately ninety Deputies of the Right elected in 1893, only one-third were Catholic Republicans.

Socialist Developments. Defeat of the Commune in 1871 had as a consequence the destruction or dispersal of the forces of revolutionary socialism.[3] However, beginning in 1876, sporadic activities of such forces began to reappear. Then, in 1879 a Socialist political party was formed, on the occasion of a Congress of Labor Unions held in Marseille. Thus, the political side of the modern labor movement in France grew in a definite sense out of the industrial side of the movement, instead of being a

[1] Cf. p. 229, *supra.* [2] Cf. p. 262, *infra.* [3] Cf. p. 70, p. 86, *supra.*

left-wing political development of an existing liberal political party, as was the case, for example, with the British Labor Party. In France, the formation of a Socialist political party was followed in a short time by a Parliamentary vote of amnesty for those who had been condemned in connection with the Commune. The reappearance of older revolutionaries soon gave rise, in turn, to a split in the ranks of the Socialists. One branch was composed of thorough-going Marxists. Its strength was principally in the North of France. Its recognized leader was Jules Guesde. Following a marked lack of success in the elections of 1881, this group, which was in a minority, was excluded from the Socialist organization by the majority branch, which was more moderate in its "reformist" and "possibilist" aims. The split illustrates the tendency for advocates of socialism, who are presumably in agreement on the end to be attained, everywhere and at all times to divide on the basis of means to the end. The division is into "revolutionaries" and "evolutionaries." In France, the same division, though personal rivalries were not without their effect, occurred within a few years in the ranks of the majority that had excluded the followers of Guesde. The more revolutionary minority, this time under Allemane, who advocated preparation for a general strike, was again excluded by the less extreme majority, composed of followers of Brousse. Such division and subdivision naturally greatly dissipated Socialist efforts; and yet the rival groups carried on vigorous Socialist propaganda in the industrial areas. This, in turn, had an important influence on the industrial side of the labor movement; and the labor unions, legalized by Act of Parliament in 1884, became increasingly Socialist in personnel and program. Then, in anticipation of the elections of 1893, the several Socialist groups effected an organization with political aims. The guiding spirit was Jean Jaurès, who was elected to Parliament in 1892. He is to be considered the founder of the Parliamentary Socialist Party. He advocated, for the elections of 1893, that Socialist candidates should conduct their campaigns on the basis of the political program of the Radicals [1] and the economic program of the Socialists. In the result, about fifty Socialists were elected to the Chamber. They consisted for the most part of working class Socialists; but they also included "bourgeois" members like Jaurès, Millerand, and Viviani.

Blocs. Beginning in 1893, the new form taken by the division of Republican forces, conditioned, as has been said, by the

[1] Cf. pp. 264-266, *infra*.

appearance on the scene of Catholic Republicans and of Socialists, placed in opposition two groupings that came to be known as "blocs." One was the Moderate Bloc, the other the Left Bloc. The Moderate Bloc was formed of Catholic Republicans and of the remains of the Opportunists. The two elements were together called "Progressists." At the time, they formed a relatively homogeneous majority. The Moderate Bloc was thus able, in spite of a succession of ministries, to direct the general course of events. Though it adopted at times such slogans as "neither revolution nor reaction," mildly advocating weak social and fiscal reform, it leaned definitely towards the Right. It was conservative in the literal sense, its members conceiving themselves to be the defenders of property and order. In both these latter respects, the issue became squarely drawn with the Left. The Radicals and Socialists were in the result thrown together; and they gradually coalesced, so as ultimately to form the Left Bloc, better known merely as the Bloc. A first consideration was the fact that the Moderate Bloc was able to govern without the Radicals; and this tended to push the Radicals, younger members of whom had some ten years before asserted that their great party of the French Revolution and of the Republic ought to accept priority of social and economic questions over political,[1] in the direction of the Socialists. In the matter of public order, an outbreak of anarchist outrages in the 1890's, culminating in the assassination of President Carnot in 1894, led the Moderate Bloc to pass, with respect to the Press, propaganda, and the like, laws which alienated the Radicals and placed them in the same camp with the Socialists. So far as property was concerned, a well defined issue appeared in the form of the question of a sliding-scale income tax. Radicals and Socialists both favored a measure of this kind; whereas the Moderate Bloc, in the manner of conservatives everywhere, was intensely hostile. However, as time passed, the religious question, though closely interrelated with other issues, became the outstanding point of deep-cut difference. This was clearly manifest during the agitation over the famous Dreyfus affair. With accession to power by the Left Bloc, separation of Church and State was, after bitter controversy, finally effected.[2]

The Dreyfus Affair. The Dreyfus case began as an apparently simple affair of military justice. The intelligence service of the French Army General Staff discovered in 1894 evidence tending to show that military information was being communicated to

[1] Cf. p. 230, *supra,* and p. 265, *infra.*

[2] Cf. p. 252, *infra.*

Germany. A list of documents that had been furnished turned out to be written in a hand closely resembling that of an artillery staff officer, Captain Alfred Dreyfus, who was an Alsatian Jew. As a result of a trial by court-martial behind closed doors, on the basis of sparse evidence, some of which was not communicated to counsel for the defense, Dreyfus was in December of 1894 convicted, condemned to life exile, publicly degraded, and sent to Devil's Island. At the time, the case aroused little interest. However, Dreyfus vigorously asserted his innocence; and his friends and family, convinced that he had been falsely accused, undertook a careful search for new evidence. Finally, another Alsatian officer, Colonel Picquart, succeeded to the position of chief of the intelligence service of the General Staff. On the basis of varied evidence which found its way into his possession, he became convinced in 1897 that an infantry officer of Hungarian origin, a certain Major Esterhazy, was guilty of the crime for which Dreyfus was being punished. Picquart informed the General Staff of his conviction, with the result that he was ordered to keep silent concerning the matter. He was presently transferred to a post in Africa. Before leaving, however, Picquart confided his knowledge to an intimate friend, who was a lawyer; and the friend, in turn, informed an Alsatian, Scheurer-Kestner, Vice-President of the Senate. The brother of Dreyfus denounced Esterhazy as guilty. Scheurer-Kestner demanded of the ministry that the case be reopened. The ministry refused, somewhat naturally fearing for the country to be aroused as it undoubtedly would be. In the beginning, as a matter of fact, the country remained for the most part indifferent; for the body of the people was, respecting a judicial decision, unable to believe that so great an injustice could be worked through prejudice and plotting. A violent anti-Semitic press had already come into action; and now the General Staff conducted through the press of the Right a scurrilous campaign against supporters of a "traitor." Germany was asserted to be employing "a syndicate of treason," composed of Jews, Freemasons, and Protestants, for the betrayal of France. The first round went against Dreyfus. Esterhazy was sent before a court-martial, where he was acquitted. However, the partisans of Dreyfus pressed the attack. Many persons in intellectual life—scholars, writers, and students—were skeptical concerning Dreyfus's guilt, or became convinced of his innocence. Petitions were circulated demanding information concerning irregularities in the judicial proceedings; and efforts were made to arouse public opinion. The novelist,

Zola, published an open letter, accusing of complicity Ministers of War, General Staff Officers, and others; and he accused the first court-martial of having condemned Dreyfus on the basis of evidence that was kept secret and the second court-martial of having acquitted Esterhazy "by order." Zola was early in 1898 tried in a Court of Assizes. During the trial, the two courts-martial were re-examined in such a damaging way that the General Staff directly intervened in the trial, furnishing to the jury some of the secret evidence that had been responsible for the conviction of Dreyfus. Zola was convicted. Though public opinion had become thoroughly aroused, the partisans of Dreyfus appeared to be making little headway. However, in the middle of the year, events took a sudden turn. A document employed in debate in Parliament by the Minister of War in order to reinforce proof of Dreyfus's guilt was discovered to have been forged by the head of the intelligence service, Colonel Henry. The latter confessed, and committed suicide in prison. Reopening of the case was now made possible; and the Court of Cassation ordered a new trial. The following year, Dreyfus was brought back from Devil's Island, tried by court-martial at Rennes, and again convicted, though this time, strangely enough, "extenuating circumstances" were recognized. The ministry wisely decided to pardon Dreyfus. Finally, in 1905, the Court of Cassation quashed the Rennes verdict, without ordering a new trial. Dreyfus was reinstated in the Army.

The Dreyfus affair, beginning as a judicial case, ended by splitting France into two hostile political camps. It was the kind of event that was capable of bringing to the surface all the bitterness, vehemence, and violence inherent in the opposition of Right and Left in a country where people think and feel intensely. Friendships of long standing were wrecked; and, in other ways, emotions proved themselves to be heated to an almost unimaginable pitch. The pattern was in its bare outlines simple. On the one side were those Frenchmen who had been traditionally grouped as conservatives,—supporters of the Monarchy, of the Church, and of the Army. They launched scurrilous attacks against the Republic and against parliamentary government, the regimes that they associated with democracy, in other words, with opposition to caste and privilege. On the other side were the elements containing the supporters of the tradition of the French Revolution and the advocates of bold solutions of problems emerging from the Industrial Revolution. They were enraged by the close alliance between Army and Church. The Radicals,

traditional enemies of the meddling by the clergy in political life, were joined by the Socialists in a bitter anti-clericalism. Both were vehemently hostile to an Army so officered as to constitute a real menace to democracy. The Right, being in the wrong with respect to the immediate issue, was, as things developed, constrained to argue that the question of Dreyfus's guilt or innocence was secondary. Justice had to yield precedence to considerations of State. The prestige of the Army and the honor of the Church must be defended at all costs. On the other hand, the Left derived strength from consciousness of the justice of its cause. Intellectuals flocked to its side; and foreign countries recognized the rightness of its position. Indirect consequences of the whole affair may be detected in France even at the present day. The most important direct consequence was unification of the Left to a degree that made possible the "purging" of the Army and, more particularly, the separation of Church and State.

Republican Defense. The ministry that decided upon the pardon of Dreyfus in September of 1899 was a ministry formed three months earlier by Waldeck-Rousseau. It was, incidentally, destined to have the longest life that any ministry has had under the Third Republic. The general elections of May of 1898 had taken place before the sudden turn given to events by the suicide of Colonel Henry. No profound alteration in the political composition of the Chamber resulted. However, the Left succeeded immediately in bringing about the downfall of the Moderate ministry of Méline, which had come into existence in 1896; and power gradually gravitated towards the Left. In February of 1899, an event of considerable importance took place, when a new President of the Republic was elected in the stead of Félix Faure, who had suddenly died. Faure was considered anti-Dreyfus; and the election of Emile Loubet, regarded as pro-Dreyfus, was interpreted as a Left victory. The Right, which had seen fit to support a subscription in favor of Colonel Henry, organized hostile demonstrations against Loubet. Insults were shouted at the President as he drove through the streets; and he was, on one occasion, actually assaulted while attending the races. But the continued attacks of the Army and the Church now began to bear bitter fruit for them. The danger which these attacks had been to the life of the Republic caused the Waldeck-Rousseau ministry, formed in June of 1899, to be known as the "Ministry of Republican Defence." The Prime Minister was a jurist of conservative instincts who had been

much influenced by the Dreyfus affair. However, his ministry had not the appearance of leaning heavily to the Left, though it included in the person of Millerand the first Socialist that had held ministerial office. The work of Republican defense was begun at once. Certain generals and other officers of the Army who were held to be especially dangerous to the Republic were pensioned, relieved, or disgraced; and reorganization was effected which was calculated to break the power of a Monarchist and reactionary clique. Then came the turn of the Church. Waldeck-Rousseau was convinced that in the latter days of the Dreyfus affair certain powerful and rich religious orders, more particularly the Assumptionists and Jesuits, were vigorously supporting the agitation of the Right. The order of the Assumptionists was dissolved. Thus, the first move involved in theory merely the execution of existing laws. As a matter of fact, an investigation conducted on behalf of the ministry disclosed serious consequences of a practice whereby many religious orders remained in France without the authorization required by the provisions of law passed in the time of Ferry.[1] Illegal monasteries were found to exist possessing valuable property, conducting remunerative commerce in liqueurs and other products, and receiving, contrary to law, bequests on which duty was not paid. The teaching orders were found to be conducting the education of more pupils than the State schools. They were undermining the republican and democratic ideas of the sons of the noble, the wealthy, and the military classes. As a result, an Associations Act, introduced in 1899, was passed in 1901. According to its terms, authorization of the orders could be made only by Parliament, instead of by executive decree; authorization was required to be sought within three months; and members of unauthorized orders were forbidden to teach. Most of the orders sought authorization within the required period; but their fate was to be decided in altered conditions.

Combes and the Religious Orders. General elections held in May of 1902 resulted in victory for the Left Bloc. The representation of the majority was substantially increased. At the same time, the size of the Left Parliamentary majority was, it is worth noting, somewhat disproportionately great in relation to the popular vote cast. Waldeck-Rousseau, exhausted and ill, decided, without waiting for the convening of the Chamber, to resign. The new leader of the Left was Senator Combes, a little

[1] Cf. p. 239, *supra*.

old man of seventy, who, after being a student and teacher of theology, had become a somewhat vindictive anti-clerical. He undoubtedly carried out the Associations Act more rigorously than had been intended at the time of its passage; and yet it can scarcely be said that he led a reluctant majority. On the contrary, he was in large measure its willing instrument. A kind of Left steering committee, known as the "Delegation of the Lefts," which had been formed under Waldeck-Rousseau, became especially effective after the elections of 1902. Decisions were made in conference outside the Chamber; and, the necessary majority existing, they were translated into votes in Parliament. The requests by the religious orders for authorization of their establishments, instead of being examined each on its merits as Waldeck-Rousseau had intended, were submitted to Parliament in a block and rejected. There were only the rarest exceptions. Schools were closed by decree; and a measure was passed through Parliament forbidding members of orders that had been dissolved from teaching in the community where their establishment had been. Resistance and protests were inevitable, even Waldeck-Rousseau finally expressing objection; but the ministry proved strong enough to carry through its decisions. Ultimately, as was doubtless likewise inevitable, Combes came into direct conflict with the Pope. On the occasion of a visit in March of 1904 by President Loubet to the King of Italy, the Pope protested diplomatically to various countries; and French sentiment was so aroused that the French Ambassador to the Vatican was recalled. When, two or three months later, the Pope ordered two French bishops to proceed to Rome for trial, diplomatic relations were severed. Before the end of the year, a bill was introduced with a view to rupture of the Concordat,[1] that is to say, to separation of Church and State. The bill, after discussion extending practically throughout the following year, became law in December of 1905. Meanwhile, Combes having resigned in January and a Moderate ministry having been formed, the principal part in the passage of the bill was played by the young committee reporter in the Chamber, Briand, who thus established a reputation and marked himself as a man of the future.[2] By the Act, religion in France was made a private matter. The policy of the Republic became that of withholding its recognition, declining to pay salaries, and refusing subsidies to all churches. The property settlement made by the Act, according to which possessions of the

[1] Cf. p. 56, *supra.*

[2] Cf. p. 158, *supra.*

Church were allocated to associations of citizens, was, in its principle and its execution, subject of further protest, resistance, and bitterness.

4. REPUBLICAN DIVISION: BREAK-UP OF THE BLOC: 1906-1910

The Electoral Issue. The period from 1906 to 1910 was characterized by the break-up of the Left Bloc. Indeed, this disintegration had begun towards the end of Combes's tenure of office. The rigor of his anti-clerical activities, together with maladroit and unpopular actions by the Ministers of the Navy and of the Army, resulted in the loss of a certain number of supporters from the right wing of the Bloc. Then, on the extreme left, the Socialists were, in the course of 1905, lost to the Bloc. This resulted from the unification of the several socialist organizations on the basis of a Marxist program adopted that year by the International at Amsterdam. The unified French party,[1] the French Section of the Workers' International (S. F. I. O), declared that it was "not a party of reform, but a party of class struggle and of revolution." Nevertheless, at the general elections of May of 1906, the Left scored a smashing victory, the Radicals succeeding to a position of much power. Meanwhile, the Left had been able to elect its candidate, Fallières, to the Presidency of the Republic. Then, towards the end of the year, Clemenceau, who, damaged by the Panama scandal, had returned to public life during the Dreyfus affair, formed a ministry that was to last for nearly three years. In the course of this period, Clemenceau and the Radicals, among whom many, under the influence of experience and responsibility, tended to become more moderate, came into conflict with the Socialists because of measures taken by the ministry for the purpose of maintaining order against organized labor acting under revolutionary influence. Disintegration of the Bloc was completed. The Radicals, as so often happens to liberal parties, were caught in a cross-fire from Right and Left. Clemenceau resigned in July of 1909 in connection with a personal altercation. Moreover, the electoral issue, partly as a result of a growing unpopularity of Parliament, occasioned by the hasty and undignified voting in 1906 of a 66 per cent increase in the salaries of members of Parliament, gave rise to burning controversy. The Right proposed a system of Pro-

[1] Cf. p. 262, *infra.*

portional Representation; and the Socialists joined in supporting it. The Radicals were split on the issue. The majority were favorable to the single-member constituency system, which gave an advantage to the party in control of the Ministry of the Interior,[1] but they were disinclined openly to advocate its retention. In these conditions, the elections of 1910 were held.

5. REPUBLICAN DIVISION: REFORMING OF THE BLOC: 1910-1914

Military Service and the Income Tax. The results of the general elections of May of 1910 were not clear. The former majority was seriously shaken. Nearly half of the Deputies were newcomers in the Chamber. The number of Socialist Deputies was substantially increased, some of them owing their election to votes from the Right on the second ballot. A majority of the whole was favorable to Proportional Representation; but protracted discussion gave rise to no real agreement, and electoral reform was abandoned in 1913. The period was one of short ministries, of continued conflict with organized labor, and of momentous events in the realm of foreign affairs. In the last respect, the international situation appeared to be getting so critical that opinion was aroused in favor of a law re-establishing the three-year military service period which had been abandoned in 1905. Such a measure was passed by Parliament in July of 1913. A part of the Radicals, together with the Socialists, vigorously opposed the measure, and succeeded in securing certain concessions. In the result, Socialists and Radicals were drawn together; and the Bloc was reformed on the basis of a program containing as its principal item advocacy of the sliding-scale income tax. At the general elections of May of 1914, the Left scored a victory of unprecedented proportions. During the summer, the World War broke out.

6. THE WORLD WAR: 1914-1919

Submergence of Party Politics. The basic political fact of the World War period was the formation of the "Sacred Union." Party conflicts and differences were renounced in the face of the critical situation in the sphere of foreign relations. Before the end of August, the Prime Minister, Viviani, reorganized his

[1] Cf. p. 144, *supra.*

ministry, extending it on the one side slightly to the Right and, on the Left, including two Ministers from the Unified Socialists. A year later, similar extension went still further to the Right and, likewise, resulted in the drafting of another Unified Socialist. However, after a short interval, political activities, especially those of a personal character, began, though on a more restricted scale, to reassert themselves. Parliamentary government, with its characteristic control, began slowly to operate again.[1] On the other hand, the primary national aim was, of course, prosecution of the War; and the requirements of military secrecy, together with the operation of censorship, rendered opinion uncertain and confused. Several changes of ministry took place. Prosecution of the War, with its military ups and downs, jealousies concerning appointments to high commands in the Army, and economic and diplomatic problems, could scarcely be attended by complete unity. Divisions began to appear among the Unified Socialists; and, before the end of the War, a majority had gone into opposition. A few Radicals who favored peace without victory, and even worked for it, were accused of being defeatists and traitors. In the result, the Left suffered. History suggests that reaction is a frequent immediate result of war. In France, the Right had, in general, warned against Germany and urged a strong military and diplomatic policy; so that events tended to bear out the Right and to discredit the Left. Finally, conditions became such that Clemenceau, called in 1917 to form a ministry, was able to establish what was virtually a dictatorship. He rallied the country behind a strong policy of "war to the end" and "the Germans will pay" in foreign policy and, in internal affairs, of opposition to "bolshevist" Socialists and Radical "traitors." The War having been brought to a successful close, there is little wonder that the Right entered the elections of 1919 in a strong position.

7. POST-WAR POLITICS

National Bloc and Left Cartel

Re-emergence of Party Politics. For the general elections of November of 1919, postponed from the spring of 1918, a National Bloc was formed. In anticipation of the elections, Parliament passed an Act establishing a modified system of Proportional

[1] Cf. pp. 171-172, *supra.*

Representation.[1] This system made it possible for the elements of the National Bloc to agree on a common list and to score a striking victory. The majority in the Chamber was of a decidedly Right complexion; and the period of 1919 to 1924 represents the only real exception to the general principle that during the Third Republic power has moved gradually towards the Left.[2] The founders of the National Bloc announced it as a continuation of the Sacred Union, extended into times of peace for "the great work of national reconstruction." This aim was presumably shared by all opinion; but a declaration in the program hostile to Bolshevism indicated that the National Bloc was aimed at the Unified Socialists. Influenced by post-War psychology, even the Radicals and independent Socialists joined the pact; but they soon abandoned an alliance that seemed to them to develop a definitely reactionary character. Within a short time, a vigorous opposition came into play. As a matter of fact, the Right can scarcely be said to have solved with much success the difficult internal and international problems with which the country was confronted. Public opinion was on the whole adversely affected by the occupation of the Ruhr in 1923, and the National Bloc became perceptibly weaker. For the elections of 1924, the opposition formed what came to be known as the Left Cartel, composed primarily of Radicals and Socialists. This organization inveighed against the record of the National Bloc in respect of unwise loans, unstable currency, high cost of living, unjust taxation, friendliness to vested economic interests, weakness towards clericalism, hostility towards organized labor, and aggressiveness in foreign policy. The Cartel was able to employ the electoral system as it had been by the National Bloc in 1919; and the Right suffered a crushing defeat. M. Poincaré resigned without waiting for Parliament to meet; and the victorious Left assumed control.

The Left in Power: 1924-1936

Historical Repetition. The happenings of French politics since 1924 form a part of current events. From the nature of the case, foreign affairs have played an especially important role. However, there has been little lessening of intensity, to say the least, in internal politics. Financial and economic questions have bulked especially large. A whole complexus, then, of external and internal forces has determined the course of affairs. In out-

[1] Cf. p. 144, *supra.*

[2] Cf. p. 155, *supra.*

line, this course has followed a somewhat uniform pattern. With the exception of 1928, the general elections—namely, those of 1924, 1932, and 1936—have resulted in marked successes for the Left. However, after each victory, a Left ministry has, with the passing of time, encountered difficulty that has been in large part, though not wholly, financial. Crises have tended to develop; and the Left has not been slow to accuse elements of the Right of conscious effort and intrigue to discredit the Left at the expense of the general interest. Such crises have been followed either by a non-partisan, coalition ministry of "national union," with leadership tending to lean to the Right, or by a ministry of more moderate complexion than the Left majority, receiving relatively wide support in an effort to realize internal and external stability.

The Cartel des Gauches. The Left Cartel, following their victory in 1924, began by forcing from office President Millerand, whom they regarded as having stultified the non-partisan character of his office [1] through his manifest preference for the National Bloc. Herriot, who had refused to accept office under Millerand, became Prime Minister; and his ministry lasted for a short year. It was followed by two or three ministries of still briefer duration. In these first years, the Cartel was on the whole distinctly successful in its foreign policy, but the same cannot be said of its record in internal affairs. Efforts to balance the budget and stabilize the currency did not check a steadily developing adverse situation. The crisis arrived in 1926. In the summer of that year, Poincaré proved to be the only possible Prime Minister; and his ministry of national union, including representatives of practically all elements in the Chamber except the Unified Socialists and Communists, was supported by the same Chamber that, two years before, had been chosen by the voters in repudiation of Poincaré and his policy. The situation presents a revealing commentary on the manner in which parliamentary government operates in France.

The Poincaré Interlude. Poincaré became the "saviour of the franc." He was able to restore confidence and to effect the stabilization of the currency. With the arrival of the elections of 1928, Poincaré sought a vote of confidence at the polls. This he undoubtedly received. However, political lines not having been sharply drawn, the Chamber that was elected contained no real majority. Though, from the nature of the case, there was a slight

[1] Cf. p. 235, p. 241, *supra.*

swing to the Right, the situation remained for four years confused. An interesting event occurred during the summer vacation of 1929. Following a vote by the annual Congress of the Radical Party [1] that was regarded as mandatory, the Radical Ministers of the Poincaré ministry, withdrew. Action of this kind, resulting from a vote by the Congress of the party that represents perhaps better than any other the rank and file of the French nation, has occurred several times in recent history. In 1929, Poincaré resigned. However, in the confused situation, no other Prime Minister proved possible; and Poincaré formed a new ministry, this time without inclusion of Radical Ministers. The next year, Poincaré, because of ill health, withdrew from public life. During the period from 1930 to 1932, in which momentous events were occurring in world affairs, the internal political situation in France remained confused.

Prelude to the Popular Front. For the elections of 1932, the Radicals and Socialists acted together in a relatively amicable manner; and the result was victory for the Left. However, almost from the beginning, the fixed policy of the Socialists, not to accept responsibility of office but only to lend support, created difficulties. Ministries formed successively by Herriot, Boncour, and Daladier were unable to develop stable majorities. Opinion in the country tended to become nervous and to feel some distrust for a parliamentary system that seemed to display more weakness than strength. Uncertainty was enhanced by the critical character of European and world events, culminating in 1933 in the Nazi dictatorship. Then, in 1934, the famous Stavisky scandal was followed in February by rioting and street fighting. A severe crisis ensued. Finally, Doumergue, in retirement in the South of France, was called to form a ministry of national union. A further result of the highest importance was that the foundations were laid for the Popular Front. Doumergue succeeded in somewhat calming the tension, with the result that before the year was out a Radical Congress instructed the Ministers belonging to the party to withdraw from the Doumergue ministry. Doumergue resigned. In spite of earlier dire predictions of what would happen if Doumergue should not succeed, his fall was followed by no untoward events. Doumergue was succeeded by Flandin, and Flandin by Laval. The Left, having finally effected some measure of agreement, brought about the downfall of Laval. In his place Sarraut was put, for the specific purpose of tiding things

[1] Cf. p. 267, *infra*.

over until the 1936 elections. For these elections, the Popular Front, formed by Communists, Socialists, and Radicals on the primary basis of opposition to fascism, undertook careful preparation. The result was sweeping victory.

CHAPTER XI. CONTEMPORARY POLITICAL ORGANIZATION

1. INTRODUCTORY

In the course of political developments during the Third Republic, partisan organizations and groupings have naturally undergone many vicissitudes. The deep division between Right and Left has never been absent; but the confused surface has presented a chaotic and kaleidoscopic appearance. Groupings displaying greater or lesser degrees of organization have come and gone. Names have been changed and even exchanged, until much terminology has become unmeaning, except to the initiated and sometimes even to them. And yet, out of it all the present situation has developed in what has been in some sense a fatalistic fashion. It is this consideration which gives to historical background its importance and interest.

The present-day picture of political parties in France, though it may doubtless be said on the whole to become clearer with the passing of time, is still not without its obscure areas. Multiplicity of parties continues to be the source of possible confusion. Again, the parties display, as compared one with another, varying degrees of organization and of homogeneity. And then, as has been noticed, the correspondence between party organizations in the county and political groupings in Parliament is in some cases far from exact.[1] There appear in the Chambers various groups that correspond to no well defined parties; and some party organizations correspond closely to no group in Parliament. However, the best organized and, in that and other senses, the most typical parties are those in respect of which this correspondence is definite and clear. First consideration ought to be given to the principal parties of the Left. Until recently, these were the main elements of the Popular Front,—the Communist Party, the Unified Socialist Party, and the Radical Party.

[1] Cf. p. 227, *supra.*

2. THE LEFT

Parties and Programs

Communists. The French Communist Party was, before its recent abolition, a member of the Third International, which maintains its headquarters at Moscow. The Party was known as the French Section of the Communist International (S.F.I.C.). It was abolished by decree in October of 1939. This action was immediately a result of the pact between Germany and the Soviet Union that preceded the invasion of Poland by Germany, which resulted in declaration of war by France on Germany. The party of Communists in France dates as an organization from the year 1920, when a split in the Socialist Party occurred. At that time, a majority of the Socialists voted to become part of the Third International, whereupon a minority, the present Unified Socialist Party, seceded. The majority, which has likewise experienced some relatively minor secessions, developed into the French Communist Party. As a member of the Moscow International, it accepted the body of doctrine that owes its formulation primarily to Marx and Lenin. It stood basically for the overthrow of the capitalist system by revolutionary means. It advocated class warfare, the dictatorship of the proletariat, and the socialization of the means of production, distribution, and exchange. The French party had its own particular program of action, approved by the International. However, in recent years, it had tended to relegate its program to the background, in order to join in united opposition to fascism. Not long after the origin of the French Communist Party, Moscow urged it to join the Left Cartel against the Right. However, a real working agreement was not effected until the period of preparation for the 1936 elections. At this time, the initiative was largely Communist. During the campaign, the Communists behaved with marked restraint, urging the election of their candidates on the first ballot and consistently advocating and practicing support on the second ballot for Radical or Socialist candidates leading the field after the first ballot. Communist leadership expressed the hope that some day communism, in a French form, would come to France; but it asserted that it did not consider the Popular Front a means of bringing communism or even socialization.

As a result of the elections of 1936, the Communist group in the Chamber of Deputies was composed of seventy-two members. This group was nearly three times as great as it had been in any previous Chamber. There were likewise two Communist Senators. In the days following the beginning of war between France and Germany in September of 1939, the Communist members of Parliament undertook certain activities, such for example as petitioning for the cessation of war, that were in contravention of special law. As long as Parliament was in session, these members were covered by their parliamentary immunity;[1] but, after prorogation, many of them were arrested in connection with Government moves to effect the abolition of the Communist Party.

The strength of what may be called the more orthodox Communists in France is to be found among industrial workers, particularly in the suburbs of Paris. Furthermore, many school teachers are Communists. In general, the fact that discontented classes, including the peasants in several sections, have been accustomed to cast protest votes and that in some regions there exists a kind of affectation or fashion of voting Communist as a sign of being "advanced," has brought it about in the past that the Communist vote was considerably superior to party membership.

Socialists. The Socialist Party continues, out of deference to its real founding in 1905, to call itself the Unified Socialist Party.[2] As an adherent of the Second—or London—International, it is the French Section of the Workers' International (S.F.I.O.). Its doctrine is Marxist, the Party leaders insisting that the Socialists, not the Communists, are the true disciples of Marx. The party stands for the supplanting of capitalism by a collectivist system. It proclaims itself a party not of reform but of class struggle and revolution; and yet, inasmuch as it deprecates terror and dictatorship and as it accuses the Communists of confusing social revolution with political revolution, its socialism appears essentially evolutionary. Among various other characteristics which the Socialist Party claims differentiate it from the Communists, mention may be made of its refusal to be subordinated to Moscow and of its hostility to subordination of the organized labor movement, which it thinks ought to be autonomous, to a political party. The immediate program of the Socialists, as was originally advocated by Jaurès, is, on many points, similar to that of the

[1] Cf. p. 150 n, *supra.*

[2] Cf. p. 253, *supra.*

Radicals.[1] Thus, the foreign policy of both, involving advocacy of collective security, the League of Nations, and the like, has been largely the same. Their internal policy has likewise involved agreement on various measures. However, until 1936, the Socialists had, since the World War of 1914-1918, by forbidding their leaders to take office, consistently refused to accept responsibility. The most they had undertaken to do was to act in support of Radical ministries. As a result of the elections of 1936, the Socialist representation in the Chamber of Deputies was for the first time larger than the group of Radicals, being, in fact, the largest in the Chamber. Thereupon, the distinguished leader of the Unified Socialists, Léon Blum, became Prime Minister; and he formed a ministry of the Left, except for the Communists, who, though refusing office, undertook to lend support. The achievements within a short time by the Blum ministry were astounding. Incidentally, the quick reforms that were adopted did much to bring to an end a series of "sit down" strikes that broke out after the Popular Front victory. These reforms give an excellent idea of points of agreement among the parties of the Popular Front, and, hence, are a valuable indication of the fundamental character of opinion on the Left. In the first place, a series of Acts, major and minor, secured for labor a forty-hour week, a minimum wage, paid vacations, and the right of collective bargaining, raised the age for leaving school, effected important administrative reorganization,[2] and partially restored wage and salary reductions that had been made by Laval decrees; [3] the franc was devalued; and some attack was made on the agricultural situation, on corruption of the Press, and on the problem of pensions. In the second place, far reaching reform of the Bank of France, founded by Napoleon,[4] was accomplished. According to its charter, the Bank, though a private institution, held the gold supply and issued the money of France. It was governed by fifteen Regents, of whom twelve were chosen by the two hundred stock-holders with the greatest number of shares, out of approximately 40,000 stock-holders, nearly half of whom held only one share. These twelve Regents were the instrumentalities of an amazing system of interlocking directorates in a large number of important corporations. The Popular Front reform gave equal voting power to all stock-holders, though, of a slightly enlarged governing body, only a few members are elective, the remainder

[1] Cf. pp. 264-266, *infra.*
[2] Cf. p. 130, *supra.*
[3] Cf. p. 175, *supra.*
[4] Cf. p. 56, *supra.*

being appointed in such a way as to represent the public interest rather than the interests of private finance and industry. In the next place, an Act was passed authorizing nationalization of the munitions industry. And, finally, legal power was established to dissolve the several existing fascist organizations.

The effects, actual and potential, of the Blum reforms have been in considerable measure obscured by the international situation. At the same time, the outlook and to some extent the life of people of the working classes were profoundly affected. For example, the forty-hour week, before its subsequent modification in the interest of war production, enabled laborers in industrial communities to spend part of each week in the country and thus for the first time to become acquainted with the real France.

Blum is, of course, not from a laborer family; and the same is for the most part true of other leaders of the Unified Socialists. Some of them are even men of considerable wealth. No small number of persons in the professions and in university life are Socialists. As in the case of the Communists, the Socialist Party can command the services, especially for purposes of propaganda, of many school teachers and other government employees. However, the body of the Party membership is composed of industrial and to some extent agricultural workers. Such members are to be found in the regions and in the industries—for example, mining and metallurgy—where Communism has not become established. Likewise, at times of election, the Socialist Party receives the support of a part of such persons as become, through discontent and dissatisfaction, "advanced." [1] The present Group of the Unified Socialists in the Chamber of Deputies consists of 155 members. The Group in the Senate is composed of 15.

Radicals. British Communists, in attempting in 1936 to clarify opinion with respect to the Popular Front in France, described the Radicals as the "French Liberals." This analogy should, in reality, assist the student of government in understanding the character of this highly important French party. The Radicals, in general, do correspond to the Liberals in England. French Radicals and English Liberals belong to the same international organization. Nevertheless, for the time being, French Radicals, it may be noted, have in large measure escaped the fate of English Liberals, who are almost ground to pieces between the Labor Party and the Conservatives. Indeed, the Radicals, though their disintegration and death have often been prophesied by their

[1] Cf. p. 262, *supra*.

opponents, display an astounding vigor and vitality. The brilliant author writing under the pseudonym of Alain, whose book, *Éléments d'une doctrine radicale,*[1] has been called the greatest study of political psychology ever to emanate from the Left, asserts that French Radicalism, far from being old and moribund, is an infant, and that what it will grow into is the only really important question of French politics. The term *radical,* it should be remembered, is an historical survival; and, as applied to the party of that name, it should not be given the meaning and associations attaching to certain contemporary American uses of the expression. The French Radical Party was officially founded in 1901, but its antecedents go back much further. Indeed, it claims direct descent from the French Revolution. It is, in this tradition, hostile to the Church, the Army, and the Bankers. In the same tradition, it has been the typical Republican party. This appears in its official name, "The Republican Party of Radicals and Socialist Radicals." The name indicates a dual composition that has persisted for many years. One wing is in the old political liberal tradition, which laid stress on individualism. Thus, the party was closely associated with the founding of the League of the Rights of Man and of the Citizen; [2] and it continues to furnish a principal part of the membership. The other wing is in the more modern economic and social liberal tradition, which advocates employment of democratic processes to bring an increasingly great degree of social justice to the masses. In the 1880's, a group of young Radicals advocated that Gambetta's program be supplemented by a program of social reforms; and they added *socialist* to their name.[3] However, the later and younger element is not Marxist or collectivist; and it does not advocate class warfare and revolution. The party has in the past played a leading role in securing a large part of the country's most important laic and social legislation. Indeed, it is essentially a "party of government." Having had experience of a long lease on power, its actions are inevitably affected in some degree by determination to possess power. This characteristic is frequently labeled "jacobin" [4] by opponents of the party. At the same time, interest in and flair for practical politics cannot obscure its persistent advocacy of progressive betterment of the life of the body of the people. As has been noted,[5] the Unified Socialists have largely made the Radical program their own; and the Radicals, without

[1] Paris, 1925.
[2] Cf. p. 268, *infra.*
[3] Cf. p. 247, *supra.*
[4] Cf. p. 55, *supra.*
[5] P. 262, *supra.*

minimizing the able leadership of Blum, can justly claim a considerable amount of credit for the solid accomplishments of the Popular Front. The best known leaders of the Radical Party are Daladier and Herriot, both former school-masters. The party does not, with a few notable exceptions, recruit many of its members from the upper bourgeoisie. More of its members come from the middle bourgeoisie, and the mass of the membership from the "petite bourgeoisie." Indeed, according to M. André Siegfried, the party is "as by instinct" in favor of what is "small" and against what is "big." [1] The Party Group in the Chamber of Deputies has at present 116 members. In the previous Chamber, the membership was about 160; and yet past experience suggests that caution ought to be observed in deducing from these figures that a permanent decline has set in. The Radical Group in the Senate, officially known as the Democratic Left, consists of 151 members, that is, of almost a majority of the Senate.

Republican Socialists. A Party of Socialist and Republican Union, consisting for the most part of Socialists who do not adhere to the Unified Socialists, occupies a position between the Radicals and the S.F.I.O. It formed a minor element of the Popular Front, its Group in the Chamber consisting at present of 29 members.

Party Structure

Direction of Authority. The parties of the Left in France are organized in such a way as to display a considerable degree of general similarity one to the other. On the whole, the organization of the Radical Party and that of the Unified Socialist Party are alike in principle and structure. The Communist Party, though before its abolition its outline superficially resembled that of the other parties, displayed a certain amount of fundamental difference. The matter may perhaps be best phrased by the proposition that for the Communists authority proceeded from the top down, whereas for the Radicals and Socialists it proceeds from the bottom up.

Constituent Elements. Whatever the direction in which authority proceeds, organization of the Left parties has been and is in all cases pyramidal in structure. A national grouping stands at the top, the primary units form the base, and other units, decreasing in number as progress is made from the bottom towards the top, represent intermediate stages. The mass of the member-

[1] Cf. *op. cit.*, p. 159.

ship consists in all cases of individual adherents of the party, though non-individual members, such as newspapers, exist as exceptions. Membership is easily acquired, usually by the payment of a small fee for which a card is issued. The party tie naturally varies in strength as between parties. In general, the parties of the Left maintain stricter discipline than do the parties of the Right, the former insisting on a more thorough acceptance of party program and party decisions and expelling without great hesitation members regarded as recalcitrant. Basic primary units, normally consisting of these individual party members, are called *committees* by the Radicals and *sections* by the Socialists. They were labeled *cells* by the Communists. The first two differ from the third in being territorial in character. Sections are organized in the Communes, committees in the Communes, the Cantons, and the Arrondissements; whereas cells were organized in industrial plants and the like. On the next higher plane, committees and sections are federated, the Departments being the principal federation areas. National congresses, which meet regularly once a year and more often if circumstances require, are composed primarily of delegates from the Department organizations, to whom are added certain *ex officio* members. In the case of the Communist Party several groupings, in part functional and in part territorial, came in between the cells and the national congress. Each of the congresses chooses a national body that meets several times in the interval between congresses. This national body, which also contains *ex officio* members, the members of the Parliamentary Group being the best examples, is called the Executive Committee by the Radicals and the National Council by the Socialists. It was known as the Central Committee in the case of the Communists. Each party likewise maintains a permanent national organ, chosen by the congress or the committee, which is composed of the officers and a few other leaders of the party. It directs the national central office and supervises the dispatch of current business. It is called the Bureau by the Radicals and the Permanent Administrative Committee by the Socialists. The Communists employed the expression Political Bureau.

Leagues and Groupings

Auxiliary Forces. There exist in France many well integrated and well disciplined organizations that have a distinct political flavor, without being, in the usual sense of the word, parties. Leagues and groupings of various sorts present a bewil-

dering complexity. This is true both of the Right and the Left. Of more than passing interest in this respect are the practically countless organizations of the youth and even of children. In some cases, the initiative is primarily that of the young, whereas, in others, the initiative comes chiefly from their elders. In the second respect, nothing could be more natural than that the political parties should attempt to organize the younger generations in close alliance with themselves. Between such special organizations and organizations and federations of organizations due primarily to young initiative there is inevitably overlapping and even friction and conflict. So far as the Left is concerned, each of the parties that has been considered possesses its own organization of the younger generations; and the young members of these organizations also frequently belong to other groupings of the Left. Furthermore, in connection with the Left, several national organizations of adults deserve brief mention. The first of these is Freemasonry. It has been said to be the "organ of liaison" between Radicals and Socialists.[1] A few years after the World War, Moscow exacted of Communists that they sever their connection with Masonic Lodges. The Right undoubtedly displays a tendency to exaggerate the influence of Freemasonry in all activities of the Left; but it would, on the other hand, be a mistake to disregard the fact that this organization is in France distinctly political in character. The substantial degree of secrecy concerning its activities gives it great potential force; but, by the same token, a measure of uncertainty attends assertions with respect to it. Before the World War of 1914-1918, Freemasonry advocated better understanding with Germany. Such a position was defended by the Left as consistent with its anti-militarism and its advocacy of peace; but the Right denounced this position as anti-national. Probably the most distinguishing characteristic of French Masonry is its anti-clericalism, a characteristic which is persistently asserted by the Right to be anti-religious. In the second place, the League of the Rights of Man and of the Citizen[2] has a position definitely on the Left, though its statutory provision that it "shall intervene every time that an injustice, an arbitrary act, an abuse of power, or an illegal act shall be called to its attention" has caused it to defend individuals of the Right even against a Government of the Left or contrary to the interests of

[1] Cf. Et. Martin-Saint-Léon, *Les Sociétés de la nation: Etude sur les éléments constitutifs de la nation française* (Paris, 1930), p. 159.
[2] Cf. p. 265, *supra.*

individuals of the Left. The League issues a bimonthly publication which lists the interventions it has made. Its membership is made up largely of Radicals and Socialists. Communists were not allowed by Moscow to belong to this "bourgeois" organization. Officers and directors of the League cannot include agents of government; so that the outstanding names of the League are those of distinguished individuals outside political life, such as persons in academic life, members of the bar, and the like. Finally, the Left is naturally associated closely with organized labor. Though labor organizations are in theory professional rather than political in character, the fact that their principal aim is the advancement of the interests of workers is sufficient to insure that they cannot stand aloof from politics. The General Confederation of Labor, founded in 1902 through the fusion of two federations distinguished respectively by horizontal and vertical organization, included twenty years later an overwhelming majority of organized workers. In 1922, as a result of a slightly earlier split in the ranks of the Confederation, paralleling that which took place at this time in the Unified Socialist Party,[1] the communist wing of the Confederation formed a General Confederation of United Labor. Numerous attempts to reunite the two organizations were unsuccessful until the formation of the Popular Front in 1935, at which time the two branches of organized labor came together again into one national federation.[2]

3. THE RIGHT

Parties and Programs

National Republicans. The most typical party of the Right in France has been the Republican Federation. It was founded in 1903 through the fusion—whence the name "Federation"—of three organizations of a conservative or reactionary character. Many of its members were former Monarchists or sons of former Monarchists—whence, in common with many paradoxes of party labels, the epithet "Republican." It has recently assumed the name "National Republican Party." At the present time the Party, which is presided over by M. Louis Marin, consistently

[1] Cf. p. 261, *supra.*

[2] Future developments in this respect will naturally be determined in considerable measure by the future, at present unpredictable, of French Communism.

maintains a Right, and anti-Left, position. It champions the cause of religion, and in its program inveighs against the Left as anti-religious. It favors woman suffrage.[1] It is opposed to the single-member constituency system of elections, and supports Proportional Representation.[2] It favors establishment of judicial review. The party finds distasteful the present income tax and existing taxes on business. It disapproves any extension of the tax system that would impose greater obligation on the moneyed classes. Against all socialization and regulation in industry, it is vigorously laissez-faire in economic doctrine. In foreign policy, it is nationalistic; and, far from considering the Ruhr expedition a mistake or regarding as shortsighted other rigid attempts to maintain the Versailles system, the Party feels that the present situation is the result of weakness and vacillation attendant on flirtation with pacifism and collective security.[3] Members of the Republican Federation Group in the Chamber of Deputies at present number 62. In the Senate, the Group of Republican Union corresponds most nearly to the Republican Federation. It is at this time composed of 65 members.

The Democratic Alliance. The Democratic Alliance is not greatly different from the National Republican Party, though it is slightly less to the Right. It was founded in 1901 by Carnot. It has been several times reorganized, the last time in 1936. It has had in its ranks such figures as Waldeck-Rousseau, Deschanel, Jules Siegfried, Loubet, and Poincaré. Its present leader is the former Prime Minister, Flandin. It is not a closed party, and its members may also belong to another party or other political organizations. The general position of the Democratic Alliance has been said to be "conservative but not reactionary." In this context, it is most clearly distinguished from the National Republican Party in respect of the religious question. It advocates a position of neutrality for the State, opposing equally anti-clericalism and clericalism. The party accepts reluctantly the income tax and taxes on business; but it is vigorously anti-socialist. In its individualist economic views, it is similar to the National Republican Party. The two parties also do not differ greatly in respect of foreign policy. The members of the Democratic Alliance belong in the Chamber of Deputies primarily to the Alliance of Left Republicans and Independent Radicals, with 40

[1] Cf. p. 147, *supra.*
[2] Cf. p. 144, *supra.*
[3] This intransigent attitude may well be fraught with further serious consequences, if it should prevail, in the future.

members, and in the Senate to the Democratic and Radical Union, with 27 members, and also to the Republican Union.

Popular Democrats. A word should be said about the Popular Democratic Party. It is a young party corresponding roughly to the Center Party that existed previously in Germany. Its general position is that of Christian Socialism. Though it favors strong defense of religious interests, it supports economic and social reform.[1] It has a small Group of 14 in the Chamber of Deputies, but no group in the Senate.

Action Française. Finally, when it existed—it was legally abolished as a party in 1935—the most picturesque party and the party of ablest leadership in France was the royalist party, known as *L'Action française.* It favored restoration of the Monarchy, and advocated as necessary for the purpose direct action. It was strongly anti-parliamentary. As a result, it did not enter electoral campaigns, and there was no group in the Chamber or the Senate corresponding directly to it. Where a few of its members were elected, they sat as *independents.* It was under the distinguished leadership of Charles Maurras and Léon Daudet. The youth organization of the party, known as *Camelots du Roi* (King's Companions), became notorious because of student activities, such as breaking up meetings and the like. The party, though strongly Catholic in membership and sympathies, succeeded in 1926 in being condemned by the Vatican; and its relations with the royal family likewise became strained. Following a series of scurrilous attacks in the press, a physical attack was made on Léon Blum early in 1936. The party was dissolved, and Charles Maurras was tried and imprisoned for incitement to assault.[2]

Party Structure

Constituent Elements. The organization of the parties of the Right, though lacking the closeness and discipline to be found on the Left, follows, in outline, a conventional pattern. The structure is pyramidal. Units are organized locally, and these are normally federated in the several Departments. These organizations, in turn, compose the national organization. Annual meetings are the rule, the meeting of the National Republican Party being known as the General Assembly and the meetings of the Democratic Alliance and the Popular Democratic Party as Congresses.

[1] Cf. p. 231, *supra.*

[2] He was later elected by the *Académie française* to a position among its "immortals."

In the interval between annual meetings, power is vested in smaller bodies, members of which, other than *ex officio* members, are elected at the annual meetings. Thus, the National Republican Party and the Popular Democratic Party have National Councils, the Democratic Alliance a Directing Committee. The Directing Committee of the Democratic Alliance makes use of various study committees which, through reporters, present to the annual Congress, conclusions on subjects of interest. The National Councils of the National Republican Party and the Popular Democrats choose Executive Committees.

Leagues and Groupings

Auxiliaries. As has been mentioned, youth organizations and other leagues and groupings that are not specifically political parties have been proliferated on the Right as well as on the Left. Typical Right organizations consist of various employer associations, tax-payers' leagues, and other bodies that defend privileged religious, economic, and social interests. Most in the public eye for a time was the *Croix de feu.* This was originally an organization of war veterans, the political possibilities of which the forces of reaction were not long after its founding in 1927 in appreciating. Its membership was, particularly following the riots of February of 1934, greatly extended; and it frankly became political in character. The forces were armed and well disciplined, and they demonstrated that they possessed the faculty of rapid mobilization. Their leader, Colonel de la Rocque, turned out, however, to be a man of indecision, of mediocre intelligence, and of limited personal force. The organization, together with lesser fascist groupings, was dissolved after the victory of the Popular Front in 1936. Whether such a movement is capable of developing sufficient strength to overthrow the parliamentary republic is a question the answer to which is of the highest moment for the future fate of France.

4. THE OUTLOOK

The War of 1939. The political future of France is, from the nature of things, in the highest degree uncertain. Confident prediction is impossible. The outcome of the War of 1939, it need scarcely be said, is of the utmost importance. One thing seems certain. France will display a vitality that has often sur-

prised and confounded her opponents and critics. Even in the first months of the new war, political democracy and parliamentary government gave evidence of possessing genuine basic strength. Whatever the future may be, it will not be comprehensible except in terms of the past; and whatever institutions and concepts are destined to prevail, they will be understandable only in the context of the traditions which they will inherit.

BIBLIOGRAPHICAL NOTE ON THE FRENCH POLITICAL SYSTEM

Some suggestions concerning sources for the study of French government and politics may be had from the footnotes on the preceding pages. An exhaustive list, at this point, of works dealing with the subject would almost certainly not be found very valuable by the student. Two interconnected considerations are in this respect pertinent. Most of the outstanding works that are involved are naturally written in French; and, from the nature of the case, they are not everywhere in this country readily available. The suggestions that follow may prove of some value to the student.

1. PRIMARY MATERIALS

(a) In French

First place naturally goes to the Constitution of the Third Republic. There is no lack of copies of the text of the Constitutional Laws that compose it. It may be found in most convenient form, along with much other invaluable historical material, in

Duguit et Monnier, *Les Constitutions et les principales lois politiques de la France depuis 1789* (5e éd., Paris, 1932).

So far as official publications are concerned, a central position is occupied by the *Journal officiel de la République française.* The student who has occasion may learn without difficulty to make his way through the bound volumes of this publication. He should be acquainted with a few historical facts concerning it.

A periodical, *La Gazette nationale: ou Le Moniteur universel,* was founded on November 24, 1789. It contained, in the form of résumés, information on foreign affairs and the debates in the National Assembly. On February 3, 1790, this journal absorbed the *Bulletin de l'Assemblée nationale;* and debates were reproduced in "dramatic form." At this same time, in anticipation of the binding of the first volume, *post factum* numbers were made up for the

period from May 5, 1789, date of the convening of the States-General, to November 24, 1789. The journal was made official in the Year VIII; and its title was shortened to the familiar *Moniteur universel* in 1811. It remained, with the exception of the period from July 8, 1814 to February 1, 1815, the official government journal until 1869. It was replaced at that time by the *Journal officiel,* which has continued to the present day. The *Moniteur universel,* having lost its official status, appeared as a conservative newspaper until 1901, at which time it went out of existence.

The numbers of the *Moniteur universel* from the meeting of the States-General to the Consulate (May of 1789 to November of 1799) may be found in *Réimpression de l'Ancien moniteur* (L. Gallois: 31 vol. gd. in 8°, Paris, 1840-1845). It was later re-edited. A much more ambitious effort in editorship is *Les Archives parlementaires de 1787 à 1860.* This work was ordered by the *Corps législatif* to be prepared. It was begun under the direction of two assistant librarians of the *Corps législatif,* the first volume appearing in 1867; and other scholars continued its direction. A first series was planned to cover the years 1787-1799. By 1914, 82 volumes had appeared, volume 82 coming down to January 4, 1794. In the series planned to cover the period 1800-1860, 127 volumes have appeared, the last ending at July 17, 1839.

Publication of the *Journal officiel* (to which title was added *de l'Empire français* until September 5, 1870, since when *de la République française* has been added) was until 1880 entrusted to private enterprise. Since that year, it has been a government undertaking. The volumes are not always bound uniformly; but this presents no great difficulty. The present contents fall into three parts: (1) *Edition "lois et decrets,"* which in turn contains an official part (laws, decrees, etc.) and an unofficial part (announcements, etc.); (2) *Edition des "débats parlementaires,"* which contains a stenographic transcript of the proceedings in the Chamber and in the Senate, together with written questions and answers; (3) *"Edition complète,"* which, in addition to the two parts mentioned in (1) and (2), includes *documents, tables,* etc.

Various other collections of documentary material exist.

Special mention may be made of the codes of procedural rules of the Chambers, of which new editions appear from time to time. They are

Le Règlement de la Chambre des députés
Le Règlement du Sénat.

Of much historical interest in this respect is

Bonnard, *Les Règlements des assemblées législatives de la France depuis 1789* (Paris, 1926).

(b) In English

Translations of the Constitution and other documentary materials, together with certain "readings," may be found in

Anderson, F. M., *The Constitutions and Other Select Documents Illustrative of the History of France 1789-1901* (2nd ed., Minneapolis, 1908).
Hill, N. L., and Stoke, H. W., *The Background of European Governments* (2nd ed., New York, 1939), Part II.
Rappard, W. E., et al., *Source Book on European Governments* (New York, 1937), Section II, by W. R. Sharp.

2. SECONDARY WORKS

(a) In French

It is not customary in France for books to appear on the governmental system as a whole. However, mention may be made of two small volumes that are exceptions in this respect. They are

Joseph-Barthélemy, *Le Gouvernement de la France* (3e éd., Paris, 1939). On the whole, the most satisfactory introduction in French.
Trotabas, L., *Constitution et gouvernement de la France* (Paris, 1930). A somewhat shorter popular manual.

The subjects treated in the United States in a general work on a governmental system are dealt with in France in accordance with a division that is legalistic and that is rigidly and formally logical. Thus, the student must give his especial attention to Constitutional Law, to Administrative Law, and to Public Finance; and, though he may study them together in outline in books on Public Law, he will normally tackle them separately in separate works. In respect of Constitutional Law, although there are several competent and useful small manuals, the outstanding works are

Duguit, L., *Traité de droit constitutionnel* (5 vol., Paris: t. I-II, 3e éd., 1927-1928; t. III-V, 2e éd., 1923-1925).
Esmein, A., *Eléments de droit constitutionnel français et comparé* (8e éd., 2 vol., Paris, 1927-1928).
Hauriou, M., *Précis de droit constitutionnel* (2e éd., Paris, 1929).
Joseph-Barthélemy et Duez, P., *Traité élémentaire de droit constitutionnel* (2e éd., Paris, 1933).

In respect of Administrative Law, although historical interest attaches to multi-volume older works and although several useful and competent small manuals exist, the most important volumes are

Berthélemy, H., *Traité élémentaire de droit administratif* (13e éd., Paris, 1933).

Hauriou, M., *Précis de droit administratif et de droit public* (11e éd., Paris, 1927).

In respect of Public Finance, although several useful and competent small manuals exist, the most important books are

Allix, E., *Traité élémentaire de la science des finances* (6e éd., Paris, 1931).
Jèze, G., *Cours élémentaire de science des finances et de législation financière française* (Nouvelle éd., Paris, 1931).

All the works listed above could be employed in the preparation of an elaborate and exhaustive bibliography of French works. However, bibliographical problems are much simplified in France by the existence of

Grandin, A., *Bibliographie générale des sciences juridiques, politiques, économiques et sociales de 1800 à 1925-1926* (3 vol., Paris, 1926). This work is kept up to date by annual supplements.

(b) In English

Two trail-blazing studies which, though considerably outmoded, still deserve the student's attention are

Bodley, J. E. C., *France* (new and rev. ed., London, 1902).
Lowell, A. L., *Governments and Parties in Continental Europe* (2 vol., Cambridge, Mass., 1896), Vol. I, Chs. I and II.

Also somewhat out of date but of much interest are

Bryce, Viscount, *Modern Democracies* (2nd ed., 2 vol., New York, 1924), Vol. I, Chs. XVIII-XXVI.
Sait, E. M., *Government and Politics of France* (Yonkers, 1921).

Among more recent volumes, special mention should be made of

Middleton, W. L., *The French Political System* (London, 1932).
Sharp, W. R., *The Government of the French Republic* (New York, 1938). This outstanding scholarly work takes first place as a study of government and politics in France. It contains an excellent bibliography.
Valeur, R., *French Government and Politics,* in Buell, R. L. (ed.), *Governments in Europe* (Rev. ed., New York, 1938).

Other studies of French government and politics may be found in general textbooks on European government, such as those of Professors Blachly, Friedrich, Heinberg, Munro, Ogg, Ray, Spencer, Willoughby, and others.

There exist in English, as well as in French, numerous monographs and other special studies of specific aspects of government in France. References to such studies may be found in most of the works listed above.

3. PERIODICALS

(a) In French

Much valuable material may be found in the files of such publications as

Revue du droit public
Revue politique et parlementaire
Revue des sciences politiques.

(b) In English

Many worth-while articles on various aspects of French government and politics appear in the learned reviews of England and this country.

GOVERNMENT AND POLITICS IN GERMANY

BY *Karl Loewenstein*

PART I. THE IDEA OF GERMAN NATIONHOOD: FRUSTRATION AND REALIZATION IN HISTORY

Germany, Heart of Europe

In the mysterious process of historical evolution which transformed society into the entities of modern state and nation, geographical location and individual traditions of the ethnical group are the two most influential factors for shaping national character. In Germany physical as well as historical data in their interrelation have affected government and politics to such an extent that modern Germany, contradictory and unfathomable as she appears to foreign students, can be appraised only against the background of history and tradition. In no other country does the past bear so directly on the present; nowhere else do present accomplishments correspond so directly to frustrations in the past.

On the old continent of Europe mountains and rivers, plains and valleys, islands and peninsulas were instrumental to that diversification and individualization of nationalities which the American mind has difficulty in grasping. Every European carries within himself the heritage, made conscious by habits and language, traditions and education, that he is born a member of a distinct national unit. This inescapable quality of national individuality is ever present in the European world. No intellectual effort can obliterate it.

Seen as a result of the welding forces of history over many centuries, the physical boundaries of German settlement today seem natural in that the Alps draw the line of demarcation towards the Mediterranean countries and the races in the South, the Rhine towards the West and the French, the North Sea towards England, and the Baltic Sea towards Scandinavia. To the East, however, the rivers are less boundaries than furrows of the North German plains which stretch without natural barriers imperceptibly to the Russians and into Asia.

It was from these geographical determinants that were created

the historical elements of the threefold conflict in which Germany became involved; or, in terms of modern German nationalism, that arose the "mission" of the German nation: the struggle with France, historically the hereditary arch-enemy, over the domination of the valley of the Rhine; the urge to descend from the Northern mist over the Alps into the fertile lands of sunny Italy, at all times the secret yearning of the German soul, occasioned and symbolized by the struggle for power between the German Emperors and the Roman Papacy; and finally the *Drang nach Osten* towards the open spaces of the East, forever latent in German history. From the day when the Teutonic tribes appeared on the threshold of European history the Germans were driven to embark on expansion, or what is now called *"Weltpolitik."* For inscrutable reasons, the German national character has never been self-contained. Thus, during past centuries Germany was the heart from which the pressure of lifeblood rushed to the outlying limbs of the European body, and she became the European battleground for foreign races and nations. Geographically as well as socio-politically, Germany was and is both crossroads and center of the European Continent, balanced between Asia and the West, the Northern and Mediterranean civilizations, forever undecided where to belong, and hence isolated within the very frame of Europe.

CHAPTER I. THE FIRST REICH

Germany from Charlemagne to the Reformation: The Holy Roman Empire and the Rise of Territorial Particularism

A summarizing survey may reveal some of the historical trends which help to understand the evolution of modern Germany. After the great migration which had thrown masses of the Teutonic tribes into the crumbling Roman Empire, the leadership of the powerful Frankish kings succeeded in welding together most of the German tribes into the mold of the Christian, universal monarchy of the Franco-Roman Empire, which, by its alliance and subsequent struggle with the Pope, became the nucleus of the Holy Roman Empire of the Germanic Nation; that strange political form was destined to last more than a thousand years down to the age of Napoleon I (800-1806). Charlemagne was both founder and symbol of the First Reich. Crowned by the Pope in Rome (800), he accomplished, for the first time, the merger between Roman Imperial tradition and Christian modernism. Under his successors the Carolingian universalistic monarchy broke into pieces. The more Romanized West, deeply permeated by ancient civilization and speaking a different language, split, in the treaty of Verdun (843) from the Germanic East, to which were added, by the treaty of Mersen (870) large parts of the western Rhineland and Lorraine, henceforward eternal apple of discord between Germany and France. What remained as Germany proper was hardly more than a loose bundle of scattered German tribes *(Staemme)* under their own dynasties and rulers, united merely by the spiritual idea of the First Reich and its symbol, the German Crown (elective since 911). Kingship gained its final and highest unction only by consecration bestowed on the person of the King by the Pope in Rome in the act of coronation as Emperor (since Otto I, the Great, 961). The German King was at the same time King of Italy (Lombardy) and Roman Emperor as the successor of the Caesars. The universalistic dream

of world domination has deeply ingrained itself into the German mind. It was, from the beginning, more a Reich of symbolism than of real power. Though strong, brilliant, and venerable figures were among the Emperor-Kings, the Empire carried in itself the germ of disintegration from the outset. Constantly harassed by barbarian invaders from the North and the East, by Norsemen, Danes, Magyars, Poles, and Slavs; torn by incessant civil wars between the rivaling pretenders and powerful vassals, the Emperor-Kings' power over the First Reich was in name only and not in substance.

From German feudalism emerges that other essential trait of German political history, namely the spirit and the tradition of tribal sectionalism or particularism which owed and paid legitimate allegiance to the local prince as the administrative trustee of the otherwise invisible and merely symbolic central power of the Reich. Between vassals and the Emperor-King as overlord stood the territorial dynast as the intermediary who, in due course, absorbed all real powers of the Emperor-King. Submission of the more powerful among them, the tribal dukes *(Stammesherzoege)*, was only temporary, the territorial rulers being factually kings on their native land. In spite of passing victories of the Reich over rebellious rulers, the tug-of-war ended with the ascendancy of the local princes and rulers, both temporal and spiritual, as the controlling social and political hierarchy under German feudalism. The evolution was finally legalized by Frederick II.[1] Since the thirteenth century the sovereign power of the territorial ruler (called *"Landeshoheit"*) came to be the lasting foundation of state power in Germany. The Emperors spent their strength in the maintenance of their domain in Italy and in the struggle with the Pope. The process of devolving real power to the local dynasties in the individual territories and of hollowing out the central power of the Crown fills the pages of German history down to the times of Bismarck and Hitler; it was the real cause for the political weakness of Germany when in other countries the centralizing power of the Crown, breaking down feudalism, established the nation-states which partitioned the world. Henceforward territorial sovereignty formed the rockbed of political life and State organization.

[1] The two important constitutional charters recognizing the sovereign rights of the territorial rulers are the *Confoederatio cum principibus ecclesiasticis* of 1220 and the *Statutum in favorem principum* of 1232. They constitute the German contribution to the pan-European process of feudalization, similar to the Magna Charta in England (1215) or the Golden Bull in Hungary (1222).

In the verdict of history the German Emperor-Kings of the medieval period have failed in the supreme test. They were unable to overcome the particularistic proclivities of the German race divided in numerous tribes and dynasties, to create a strong centralized government over the whole territory of the Reich, and thus to call into being, together with the German State, the German political nation. Dissipating their energies in the fight against the Papacy, embracing the fleeting mirage of a universalistic monarchy more glorious than that of the Caesars of whom they felt themselves successors, they were, in the main, responsible for the lasting political disunity of Germany. From this sin of omission of her kings, noble and spirited figures as many of them were, Germany did not recover until late in the nineteenth century. For the phantom of the Roman Crown as the symbol of the *Weltherrschaftsidee* the German kings surrendered their ascendancy at home to the territorial princes. Rarely has world history witnessed a more tragic error in judgment, tenaciously upheld as a tradition fraught with frustration and futility. Visible traces of the deep-rooted and everlasting dualism between the territorial rulers and the central power of the Reich lead down to our own time as late as to the political milestones of 1871, 1918, or 1933.

Henceforward, since the Middle Ages, German political history is grounded in the sovereignty of the dynasties of the local rulers. Allegiance to the dynasty even superseded, in due course, the subconscious feeling of tribal unity among the subjects. The actual power of the local princes as well as of the Emperor-King was based less on the common racial or tribal bond between the ruler and the ruled than on purely accidental interests in increasing dynastic domain *(Hausmacht)*. Land changed hands through partitions and successions, marriages and alliances of the most ephemeral nature; a historical evolution which explains the fact that as late as under the Weimar Republic the Palatinate, inhabited by a Rhenish population, belonged politically to distant Bavaria, or that Suabians were under the sway of several states as were Franks and Saxons. Predominance of the dynastic considerations, related, in the last analysis, to the dualism between territorial princes and the Crown, is responsible for the internal dismemberment and the hereditary disunity of the German nation. German national power, spread among countless smaller and larger territorial units under shifting dynastic allegiance, was submerged in national disunity from which it was rescued only after

centuries, consumed by a costly process of trial and error, by Bismarck, the "Iron Chancellor."

From the Reformation to the Napoleonic Era

Political disintegration was completed and intensified by the Reformation, considered by some of the German historians as a major tragedy of the nation. Dynastic jealousy and greed for increasing the family domain capitalized now on the deep-reaching conflict about the "true religion." The subjects had to adopt the official creed of the prince *(cuius regio eius religio).* Catholicism and Protestantism lined up in the fraternicidal struggle of Reformation and Counter-Reformation. While in England Henry VIII, and in France Louis XIV in his fight against the Huguenots, ruthlessly though successfully preserved national unity through religious uniformity, in Germany the religious conflict added a new permanent source of internal disruption to the existing differences between the Reich and the territorial rulers and between the princes and their "estates." The social and political homogeneity of the Catholic civilization, corrupt as it was, was destroyed forever.

Moreover, the religious struggle within Germany invited and provoked the interference of foreign powers in German domestic affairs. During the Thirty Years' War (1618-1648) the horses of foreign enemies and allies, Swedes and Croats, French and English, drank from German rivers. Flourishing cities were sacked and burned to the ground. The nation slid back to the barbarism from which it had scarcely emerged. When the Armageddon of civil and foreign war finally ended, the land was devastated, stricken by political and cultural collapse, a defenseless prey to powerful nation-states as neighbors. No other European country was ever subjected to the magnitude of such a national catastrophe.

The Westphalian Peace (1648) ended with the complete debacle of the Catholic parties. For Germany it perpetuated the religious cleavage of the Reformation. Austria, the hereditary domain of the Habsburg dynasty, which had held the dignity of the Kaiser for generations, Bavaria and other parts of the South, and the West where the ecclesiastic rulers were powerful, remained Catholic; while the Northern and Eastern territories, among them Prussia, the Free Cities and Saxony, embraced the new faith. Thus the discord between two militant religious factions was stabilized for centuries to come.

Another disastrous implication of the Westphalian Peace was

the final victory of the territorial rulers (states) over the central power of the Reich and the Emperor. The Reich, ridiculed and despised, lost even its symbolic value as the spiritual integration of German nationhood. Henceforward, the German princes, having gained undisputed sovereignty within their territories in the age of princely absolutism, considered themselves no longer bound by any allegiance whatever to the Reich. France, traditionally and insistently interested in the political weakness of her neighbor as the guiding principle of her politics from Richelieu and Louis XIV to Napoleon and Versailles, used the princes and states as pawns in her European power-game. The left bank of the Rhine was almost completely lost to Louis XIV's drive for "living space." The only common interest of the German states was to keep down the Reich. While France, England, Spain, and even Poland and Russia had achieved national unity under a strongly centralized monarchical administration and, as unified nations, began to conquer the globe, the map of Germany in the heart of Europe presented the well-known pattern of multicolored disunity of hundreds of smaller and larger territorial states, principalities, free cities, ecclesiastical lands, potentates, and rulers of every kind. The Westphalian Peace puts the official seal on Germany's national frustration.

Political Institutions of the Holy Roman Empire

A much-quoted statement of the famous German jurist Samuel Pufendorf in the seventeenth century describes the Holy Roman Empire as "neither monarchy nor aristocracy" but *irregulare aliquid corpus et monstro simile.*" [1] Only by the end of the medieval period are definite political institutions and organs discernible. The Empire assumed more definite shape in and after the Westphalian Peace. At least a rough outline of what appears as the constitutional frame of Central European organization may be attempted here.

(a) The Emperor (Kaiser). The dignity of the Emperor, hereditary under the Carolingians, became finally, after the interregnum (1254-1273), elective, as regulated in the famous "Golden Bull" of 1356. The election of the Emperor, by seven of the recognized territorial rulers, called "Electors," took place traditionally in Frankfort-on-the-Main, followed by three different coronations: one in Aix-la-Chapelle as German King, one in Lombardy (Pavia or Milan) as King of Italy, and one in Rome by the

1 "Some irregular body comparable to a monster."

Pope as Roman Emperor.[1] The Imperial office could be terminated by death, resignation, or removal (deposition). Governmental powers of the Kaiser were limited in every conceivable way. Although theoretically they extended to legislation, execution of decisions of the *Reichstag*—the feudal gathering of princes and cities—foreign relations of the Reich, financial administration and appointment of Reichs officers, none of these powers could be exercised without control or participation of other factors under an immensely complicated system of checks and balances. The highest political officer was the Imperial Arch-Chancellor *(Reichserzkanzler),* as the head of the court administration. The title has been preserved to our own day, and was declared obsolete by Hitler only in June 1939.

(b) The Reichstag. The composition, function, and general position of the *Reichstag* acquire a definite contour only at the end of the fifteenth century; and were stabilized in legal form by the Westphalian Peace. The *Reichstag,* at first irregularly convened by request of the Kaiser and made a permanent institution since 1663 (in Regensburg, Bavaria), may be characterized as a feudal assembly composed of the "estates" *(Reichsstaende).* Its decisions (called *"Reichsabschiede")* were considered as contractual conventions among the members and with the Kaiser. The members were grouped in three "colleges," those of the Electors *(Kurfuersten),* princes, and cities.

(c) Electors. The Electors were the most powerful of the territorial rulers entitled to elect the German King, legally recognized by Imperial statute in 1356.[2] Seven dynasts were raised to that dignity above the host of minor princes and potentates—namely, as the four temporal Electors, the rulers of the Rhenish Palatinate (Bavaria), Saxony, Bohemia, and Brandenburg (Prussia); and as the three ecclesiastical or spiritual Electors, the Archbishops of Mainz, Trier, and Cologne. The number was later increased to nine, including Bavaria proper (1623) and Brunswick-Lueneburg (1692-1708). The college (Council) of princes *(Fuerstenrat),* composed of other important territorial rulers, was split into spiritual and temporal "benches." The right of membership and vote was attached to the holder of the office or princely dignity within the frame of the feudal order. Finally, the college of Cities was subdivided geographically into the

[1] As a matter of fact, the Imperial dignity remained with the Hapsburg dynasty from 1438 to 1740, and, after a brief interruption, again down to 1806.

[2] *Constitutio in favorem principum* and the "Golden Bull" of Charles IV.

Rhenish and Suabian "benches." Decisions of the Reichstag were taken within the individual "colleges" by majority vote, with many important exceptions. After the Reformation, a new principle of division was added by grouping all Reichstag members along religious lines; namely, the Catholic and Evangelical bodies *(corpus Catholicorum* and *corpus Evangelicorum).* Majorization of dissentient minorities, both within each college and among the colleges as a group, was practically impossible. Seen retrospectively, the Reichstag was one of the most unworkable political assemblies in all history. Vast as was its jurisdiction on paper, extending to all matters of Reich interest, in practice it was blocked by the sovereign rights of the territorial rulers whose active co-operation was needed for all decisions and their execution. The main achievement of the body was the establishment of the Eternal Peace of the Land *(Ewiger Landfriede* (1495)), which outlawed armed self-help *(Fehderecht)* without being able to pacify the country. The administration of justice, theoretically vested in the King, devolved upon the territorial rulers. A Reich Supreme Court was established (1495) as the *Reichskammergericht.* Though its range of activities was extremely limited, in view of many exemptions granted to the territorial rulers and even to Reich subjects, and its procedure proverbial for delay and formalism, its importance lies in the reception and elaboration of the Roman Law and in the creation of at least a nucleus of common administration of justice. It was mainly through the vehicle of a common legal system that national unification could be accomplished later in the nineteenth century.

During the last centuries of the Holy Roman Empire there was practically no central political or constitutional organization in Germany. No unifying frame of government took the place of the dying feudal structure, as in England or France. After the beginning of the new era, the Holy Roman Empire—neither holy, nor Roman, nor an empire—existed only in name and no longer in substance. Germany was a bundle of hundreds of "sovereign" states, a disorganized assortment of larger and smaller territories and cities with shifting alliances and groups, incapable and undesirous of forming a national will.

The Rise of Prussia

Yet national unification was bound to come in the age of mercantilism, centralized administration of the absolute monarchy, and the triumph of the nation-state elsewhere. For more

than two centuries after the Westphalian Peace, German history reflects the struggle for leadership within the Reich between the Habsburgs and the Hohenzollerns, between Austria and Brandenburg-Prussia. The dualism between Prussia and Austria, heading for the final showdown, was to dominate the coming centuries of German history.

From its inception, the Prussian state—a unique creation of spirited rulers mobilizing the latent potentialities of a hard-working, intelligent, and disciplined population—rested on the two pillars of the army and a highly trained civil service. Both institutions were incarnations of a new practical philosophy of the State, which imposed on all subjects service and sacrifice for the State, compensated for by prestige and social honor accorded by the State. Modern Germany derives much of her theory and practice of government from the Prussian political pattern.

Frederick William (1640-1688), styled "the Great Elector," succeeded in unifying the scattered parts of his territorial possessions by the establishment of a permanent standing army (1644); this first military force in Europe based on conscription, freed from feudal *(landstaendisch)* limitations, he obtained in bitter fight against the Prussian nobility. His son Frederick I stabilized state sovereignty as a *rocher de bronce* over all rivaling forces. For the loss of its privileges the nobility was compensated by the honor and duty of serving as privileged class of officers in the King's army. The prerogative position of the Prussian landowning nobility, known as the *Junkers* class, which came to determine German policies to our own day, has its roots in the policies of the Prussian rulers. The sociological structure of the army, based on duty and social prestige instead of on loot and other tangible benefits, accounts for the moral ascendancy which helped the Prussian kings win their wars.

Out of the needs of a permanent army and a centralized financial administration grew that second pillar of German political traditions, the officialdom of the rising Prussian State. Under Frederick William I (1713-1740) the dualism between territorial and central administration was overcome. Similarly, as in England in the eighteenth century for different reasons, the person of the King became nominally divorced from the actual administration and the administrative agencies. But, while in England the Cabinet Council and the Prime Minister as its leading member assumed the pivotal functions of political leadership, the Prussian King focalized political power in his person alone by inte-

grating the entire administration of the strictly centralized State. Under Frederick I (1688-1713), the first King of Prussia (1701), "cabinet government" was fully developed; but the name implied an entirely different type of government from its namesake in England. It denotes the strictest pattern of personal government, in which the monarch, separated from his ministers and advisers, closeted alone in the solitude of his "cabinet," makes the ultimate decisions on his personal responsibility, while his ministers, merely organs of execution, perform his will as it emanates in the form of "cabinet orders." Many generations later, under the Third Reich, the cabinet orders were revived as what is known as the "Edict of the 'Fuehrer'" *(Fuehrerbefehl)*.[1] This system of personal government was workable only by creating and carefully building up the most efficient permanent civil service. Public officials were recruited partly from the army—wherefrom German civil administration has acquired its tradition of military exactness—partly from professionally trained jurists and administrators ("cameralists") who, imbued with devotion to the person of the King and justified pride in professional efficiency, served, with scanty remuneration, for the honor of the service.

Prussian authoritarian government, rooted in the supreme power of the Crown and the corresponding devotion of army and civil service, crude and rustic as it may appear when compared to the secular splendor of contemporary France or to the already cosmopolitan broadness of political life in contemporary England, reveals not the slightest trace of spiritual or political freedom; it was Spartan, hard, efficient. But it enabled Frederick II (1740-1786) to transform Prussia, an unknown middle-sized State on the edges of civilization, into a great European power. What wonder that Germany, whenever in distress, has taken comfort in returning to the governmental philosophy and military principles of the Frederician era!

Frederick II

Around the enigmatic Frederick II of Prussia, German patriotic tradition has woven the magic of legend. By his politico-military achievements alone he undoubtedly deserved the title "the Great" in Prussian history. In the Seven Years' War (1756-1763) he held his own against the most formidable combination of great powers in his time, saving his country from annihilation and

[1] See *infra*, p. 429 ff.

even retaining the spoils of previous wars of aggression. To the German mind, Potsdam, his graceful residence, became as much a symbol of military prowess and administrative thriftiness and efficiency as Weimar, one generation later, was to epitomize spiritual and cultural grandeur. The emergence of the supernatural and transcendental idea of the State is the result of both his successes and his failures. Personally he was sincere in considering himself not the master, but the first servant, of the State; and, by subordinating purely dynastic interests to the majestic concept of the all-embracing State as the highest earthly value, he created that state-mindedness of the German people which, alien as it may seem to foreign nations, corresponds so mysteriously to the German inclination toward de-personalized abstractions. From this angle, an achievement perhaps greater than his military and political successes, was his endeavor in peace to reconcile the masses of the people to the exactions of the State. By what is commonly called "enlightened absolutism," he created the proverbial honesty and efficiency of Prussian civil administration and, what is even more consequential, laid the foundation of the German pattern of the rule of law. Through judicial reforms pursued with tenacity during his whole reign,[1] he integrated the judicial organization into the public service, a process through which judges and public prosecutors were placed on equal footing with the officialdom of the State. The famous case of the miller of Sanssouci who defied an arbitrary expropriation intended by the King by referring to the "judges in Berlin" has become the arresting symbol of the establishment of the rule of law from which the Crown is not exempt. It helps one to understand the peculiar position of the judiciary and the legal profession in general in Germany, where it is much more an instrumentality of state power than in England. Likewise, the transformation of royal domanial property into state property under strictly limited fiscal rights of the Crown reflects the general trend of benevolent paternalism under which the subjects need no longer feel themselves the exploited masses—mere objects of an arbitrary court, as in France; or the background for the magnificent arrogance of the aristocratic ruling class, as in England. This juxtaposition of unlimited state power and the scrupulous maintenance of the rule of law in administration of justice; of

[1] Judicial reorganization began in 1748 under Samuel von Cocceji, Minister of Justice and Great Chancellor; it was continued under von Carmer; and culminated finally, after Frederick's death, in the famous codification of Prussian common law (*Allgemeines Preussisches Landrecht,* 1794).

authoritarian government, untouched by the slightest democratic tinge, and meticulous care for the welfare of the common man, is to the foreign observer perhaps the least understandable feature of German tradition. Yet this curious blend of "police state," enlightened absolutism, and the rule of law controlling the relations between ruler and subjects immunized Prussia—and equally all other Germany, following Frederick's lead—from the virus of the French Revolution; and it prevented the breakdown of the dynastic idea in Prussia after the military defeats suffered from Napoleon. The Prussian tradition is not only the heel of the military boot. It is as much the observance of legality in the relations between subjects and state, a tradition permeating the Second Reich of Bismarck and broken only by the Third Reich after 1933. It was Frederick whose wisdom and moderation visualized the idea of the Prussian State from which originated the reality of the Prussian nation as the crystallization of the coming German nation-state.

The End of the First Reich

When the new gospel of the French Revolution of 1789 swept over Europe, two strongly organized and consolidated monarchies stood head and shoulders over the mass of the other sovereign territorial units of Germany, Austria and Prussia, dynastic states to be sure, which even embraced a good deal of foreign ethnical stock; but in both countries a strong sense of statehood had developed. For the time being they were allied as the conservative bulwarks to stem the revolutionary tide of the French Republic. Neither the Frederician state-machine, slowed down by the incompetence and inadequacy of Frederick's successors, Frederick William II (1786-1797) and Frederick William III (1797-1840), nor Austria's outmoded system of feudal paternalism was able to defend the traditional order against the resurrected forces of France. Napoleon, consolidating and vitalizing the accomplishments of the Revolution, imposed the new order on the European Continent. Reorganizing Europe in the spirit of social equality and civic liberty, he cleared away the debris of medieval feudalism in the political order of Germany, reflected in territorial dismemberment and disunity *(Kleinstaaterei)*. The "ogre of Europe" rendered thus an invaluable service to German unification. The larger territorial states in the South were rounded out and consolidated. After the left bank of the Rhine had been lost to France, a large number of smaller independent units were

absorbed by the larger states *(Reichsdeputationshauptschluss* of Regensburg, 1803). Emperor Francis II of the Holy Roman Empire assumed, as Francis I, the title of Emperor of Austria. By this *coup d'etat* from above, the brittle frame of the Holy Roman Empire broke. Napoleon raised the Electors of Bavaria and Wuerttemberg to the dignity of kings, as a reward for their alliance with France. When, on July 12, 1806, sixteen German princes signed a new "confederation of sovereign states," under French hegemony, the Rhenisch Confederation *(Rheinbund),* Napoleon, master of Europe, refused to recognize any longer the existence of the German Empire. By declaration of August 6, 1806, the Austrian Emperor abdicated formally as German Emperor. The Holy Roman Empire of the Germanic Nation, the "First Reich," after exactly one thousand years of much glory and more misery, had ceased to exist.

CHAPTER II. FROM NAPOLEON TO THE FOUNDATION OF THE SECOND REICH

Germany and the Napoleonic Era

The Napoleonic era marks the beginning of a new epoch in German political history for two reasons. On the one hand, the Corsican conqueror, hated and secretly admired, was instrumental in the rise of German nationalism, which found its first heroic test in the war of liberation against the French arch-enemy. In this sense German nationalism is the genuine offspring of the French Revolution. On the other hand, with the Rhenish Confederation *(Rheinbund),* as the substitute though not successor of the deceased Reich, begins the chain of experiments with a new form of political organization in Germany which was to last several generations down to our day; namely, what German political science calls federalism *(Foederalismus).* It is the combination of several political units, different in size and actual power, on the footing of mutual equality, preserving their individual statehood or sovereignty yet bound together by some common political institutions and, above all, common political interests. Both currents together lead finally to the national unification of Germany. The result was delayed for two more generations, first because the slowly ripening rivalry between the two leading German powers, Prussia and Austria, had to be solved; second, because of the obstinacy of dynastic particularism of the sovereign middle states, which were unwilling to concede supremacy either to Austria or to Prussia for the sake of ultimate unification.

The real tragedy of the German political evolution, however, consisted in this, that the other legitimate offspring of the French Revolution, liberalism and democracy, did not keep pace with the drive for national unification. National unity, when it finally came, was the accomplishment of the dynasties, in particular of Prussia after the elimination of the Austrian competi-

tor; it was promoted from above, it did not rise from below as a groundswell of the people themselves. The lack of synchronization between nationalism and liberalism dried up the liberal current and Germany later on was satisfied to have obtained national unity without internal liberty. Preponderance of the monarchical idea and its institutionalization through army and public officialdom was never tempered by the active desire of the people to determine their own destinies in the form of parliamentarism as in the Western countries. The discrepancy between liberalism and traditional monarchism is responsible for the peculiar version of German constitutional government retained down to the World War; namely, the constitutional monarchy of the Central European type.

The Rhenish Confederation (Rheinbund)

Through various accessions in the following years of Napoleon's control over Germany the Rhenish Confederation embraced finally all German territorial states with the exception of Prussia, Austria, Swedish-Pomerania, Danish-Holstein, and the Hanseatic Free Cities. After the crushing defeat of Prussia in the Peace of Tilsit (1807) her possessions east of the Elbe were either converted into French vassal states or incorporated outright as administrative *départements* of the French Empire. A very large number of the smaller political units, among them no less than 72 princes and counts under the immediate allegiance to the Reich and all independent territories of the knights were wiped off the map. The great process of territorial consolidation inside of Germany had begun. Henceforward, whenever a corner of the road was rounded the state lines were simplified and a number of the smaller and weaker states were absorbed by the larger units. The members of the Confederation, after the elimination of the overlordship of the Reich, were considered as sovereign states and formed a defensive federation allied with the French Empire. The Federation had no common agencies of organization, although they were envisaged in the treaty; it was, on the whole, an alliance of independent states, under what would be termed now a Protectorate of France. Unsatisfactory as this situation may have been to German patriots, all countries under French control participated tangibly in the benefits of the modern French administration, and the contacts with the higher political civilization of the French Revolution etched indelible lines specially on the South German states, which since that time

have preserved their more liberal and even democratic political habits.

When, under the increasing pressure of French domination and exploitation, German nationalism finally awakened—Johann Gottlieb Fichte in his *Addresses to the German Nation (Reden an die deutsche Nation,* 1808) had given to patriotic feeling the most sublime and at the same time popular expression—the new nationalism underwent its first heroic test in the "war of liberation" and the victorious battles of Leipzig (1813) and of Waterloo (1815). But the liberation movement was at once canalized into the traditional forms of the monarchical principle, dynastic glorification and federalistic organization. The values of 1789 were utterly lost to the rulers, the ruling classes of the semi-feudal aristocracy, and even to the masses of the bourgeoisie. More ambitious schemes for a revival of the Reich on a modernized national basis, as entertained by the greatest political thinker of the period in Germany, Freiherr von Stein, had no chance of realization. The old Reich was dead, the only realistic proposal being a rebirth in the form of a new federation among the surviving German states, under monarchical leadership. Liberalism in Germany had been defeated on the battlefields of Leipzig and Waterloo.

The German Federation (Deutscher Bund) 1815-1866

The new Constitution for Germany after the conclusion of the Napoleonic wars was incorporated in the Acts of the Congress of Vienna.[1] It belongs to the political system generally known as the Holy Alliance, which saw its main objectives in the maintenance of the Christian monarchy and the fight against the subversive ideas of the French Revolution, a striking historical parallel to the anti-Comintern pact preceding the second world war. Germany was reorganized in the form of what German political science calls a *Staatenbund,* a confederation of states, formed by an interstate treaty or compact between sovereign princes, joined together for the common protection of the territorial integrity as established by the Peace Treaty, and for the preservation of internal peace within the states composing the *Bund.* The Confederation contained 40 members, among them 36 princes *(Fuersten)* and 4 Free Cities (Hamburg, Luebeck, Bremen, and Frankfort). Through dynastic changes membership

[1] *Deutsche Bundesakte* of June 8, 1815, supplemented later by the *Wiener Schlusspakte* of May 15, 1820.

sank subsequently to 33. Secession from the Confederation was legally impossible; admission of new members was subject to unanimity. Jurisdiction and competences of the *Bund* were established for all times, any change amounting to the conclusion of a new pact. As the only visible organ of the Confederation the Federal Assembly *(Bundesversammlung* or *Bundestag)* in Frankfort was established, a permanent congress of ambassadors, appointed by the governments of the various member states and acting on instructions from them. The total number of votes was 69 (later 65), not allotted on the basis of equality of all members, since Austria and the five Kingdoms of Prussia, Hanover, Bavaria, Saxony, and Wuerttemberg had 4 votes each, the middle states 3 or 2 each, the rest 1 vote. The distribution of votes was such as to give to the great states more weight, while each of the smaller states could prevent by its protest almost any decision. Similar voting arithmetic, destined to preserve the political balance among the members, remained a conspicuous feature of German federalism down to the Weimar Republic. War and peace were to be decided by a two-thirds vote of the Federal Assembly. Federal executive decisions *(Bundesbeschluesse)* and federal statutes *(Bundesgesetze)* had to be turned into law by the member states before they were binding on the subjects. Thus the Bund, being deprived of genuine legislative, executive, or judicial powers over the citizens of the member states, was rather a loose federation of sovereign princes or states than a true federal State.

True to its principles, the Confederation was, for half a century, the vehicle and instrument of ferocious reaction, relentlessly ferreting out liberal and democratic tendencies wherever they appeared. The name of the Austrian Minister Metternich, the guiding spirit of the Confederation, became as dreaded as the name of Himmler in Germany of today, and even the Secret State Police of the Third Reich had its predecessor in the famous Central Investigation Commission. Although the sovereign character of the member states forbade federal interference with domestic policies, important exceptions were permissible: if the member state refused to introduce the political pattern established as compulsory for all members, namely, the organization of a diet participating with the Crown in the government *(landstaendische Verfassung),* and if the member state was incapable of maintaining internal order, which meant in practice the suppression of liberal or democratic movements. The hero of the period was

the German fraternity student *(Burschenschaftler),* in constant rebellion and opposition against the cruel reaction which swept Germany between 1815 and the "mad year" of 1848.

Although the *Bund* was an improvement in the constitutional organization of Germany when compared with the defunct Reich, it was destined to block the trend toward national unity and liberalism for half a century. It saw its function in stabilizing the monarchical structure of the member states, in instilling dynastic loyalty, and in enforcing reactionary policies of the governments and princes. By setting up a united front against the peoples, the Bund widened the gulf between the masses of the non-privileged bourgeoisie and the reactionary forces affiliated with the princes which steadily regained much of their old feudal status. Capitalizing on the inveterate docility of the German burgher in fighting against "liberals" and "Jacobins"—very much in the same way as governments today used to capitalize on the anti-Bolshevik prepossessions of the bourgeoisie,—liberalism and parliamentarism were brought to such disrepute that, when finally in 1870, national unity was obtained, the bourgeoisie neglected to insist on a liberal order of national unity. On the other hand, the Bund succeeded in safeguarding, under the protection of Austria and Prussia, the territorial integrity of its members, and, with the help of internal peace, in transforming all the disjointed agricultural middle states into a national system of economic organization. During the period the German customs union blotted out the maze of interstate lines which blocked the free flow of commerce. It was destined to become an important link for the impending political unification.

It is on the background of this political situation that Hegel erected his monumental edifice of an idealistic philosophy of the State, in which the omnipotence of the State, as symbolized by the transcendental values of the Prussian monarchy, was the German answer to the ideas of 1789. It is during this period that the German version of the constitutional monarchy was established, as an anticipatory answer to the democratic parliamentary monarchy arising in the West on the pattern of the Belgian Charte of 1831. The political cleavage between the North and the South became more marked. While the North preserved the feudal and paternalistic character of its authoritarian administration, the South German states adopted a dualistic structure of monarchy; the King retained sovereignty while the people shared in legislation through a quasi-parliamentary organization of the

"estates" *(Staende)*, the latter being composed of a chamber of nobles or peers and a chamber of deputies elected on the basis of a censitory suffrage. The ministers, however, remained responsible alone to the King and not to the parliament as in the West, a version of parliamentarism which governed the political system of the Bismarckian Reich as well as of the member states down to 1918. *"Le roi règne et il gouverne,"* but within the limits of an established constitution which limits extent and range of absolute powers. Under this system the King has become a constitutional monarch. Such liberalized constitutions were granted, "by the grace of the Crown" (called "octroyed constitutions") to all South German states, in accordance with the precedent of the French Constitutional Charter of 1814.

The democratic idea of popular sovereignty, however, found supporters among the German intelligentsia only in the wake of the French Revolution of 1830. In spite of the renewed terror of the reactionary governments, wide sections of the educated bourgeoisie, which in the meantime had benefited from the progressive industrialization of economic life, showed restlessness. The demand of public opinion for more freedom and grant of civil rights became irresistible. Princes and governments were unable to read the handwriting on the wall. Prussia (under Frederick William IV [1840-1858] and Austria, dominated by Metternich, bolted the doors to constitutional and civil reforms. When the spark of the French February Revolution of 1848 ignited in Germany, the bourgeoisie, after princes and governments had lamentably failed in accomplishing liberalism with national unity, took the fate of Germany in their own hands.

The Revolution of 1848

All German revolutions before 1933 have in common that, after initial success, to which the governments in power yield without resistance, reaction is able to check popular emotionalism by appealing to the traditional values of political conservatism. The Revolution of 1848, the "mad year," is no exception to that rule. Setting out vigorously for national unity under a Reich and liberal government, it failed tragically in both. The revolutionary movement was carried by the educated bourgeoisie and by the liberal intelligentsia. It was not at all tinged by radicalism or socialism as in contemporary France. Not even the monarchical principle in the new order of Reich or the states was under fire; republicanism had little support. The Revolution

was an idea conceived by intellectuals without real power or general popular support; the masses were indifferent. No wonder that this first and futile effort to build a new democratic German Reich was subsequently much derided and overshadowed in popular conscience by the powerful personality of Bismarck, the founder of the Second Reich "by blood and iron."

A preliminary parliament, convened by South German liberal leaders, took the initiative for summoning the "German Constituent National Assembly" to Frankfort (April 1848), the first national parliament of Germany. After peaceful elections, carried out on the basis of universal manhood suffrage (one deputy for 50,000 votes), the Assembly met, on May 18, 1848, in the church of St. Paul of Frankfort.[1] Much ridiculed by later historians as a "professors' convention," the deliberations of the *Paulskirche* rank high among the constitutional documents of the world. Since the most brilliant academicians and savants of Germany shone among its members, there was a good deal of long-winded rhetoric, impractical idealism, and a deplorable lack of experience in parliamentary methods. Precious and decisive months were wasted in the elaboration of a comprehensive "Bill of Rights" (published as a statute on December 27, 1848), which was to become an invaluable precedent for the Weimar Constitution—but in fairness it should be stated that this parliament of politically untrained professors and idealists accomplished more than could be expected from a people making the first hesitant steps in self-government. The work of the *Paulskirche* is the first realization of German national unity and, as a compromise between traditional monarchism and bourgeois liberalism, it is a piece of statesmanship commanding the respect of the unbiased historian.

Starting as a "revolutionary" assembly, the *Paulskirche* gained its legal title by the creation of a Provisional Central Executive on the basis of which Archduke Johann of Austria was elected Reich Regent *(Reichsverweser).* The *Bundesrat* transferred to him all powers vested in the *Bund* (July 12, 1848). Though thus legalized by the *Bund,* the Constituent Assembly was never recognized by the governments of the states. In the following elaboration of the new Constitution the fundamental difficulty was the solution of the Austrian problem within the Reich, in fact the fulcrum of the entire constitutional structure. The inclu-

[1] The edifice of the *Paulskirche,* one of the few shrines of German liberal past, was demolished by the Nazis.

sion in the new Reich of Austria, with her large non-German population, would have jeopardized German national unity from the beginning. When finally the solution of including Austria without her foreign areas was decided on—thus anticipating the situation after the annexation of Austria by the Third Reich in 1938—Austria, having recovered from the first shock of the Revolution, balked. The hereditary Imperial Crown was offered unanimously (with 248 abstentions) to King Frederick William IV of Prussia. The narrow-minded King, the "romanticist on the throne," declined because he refused to accept the title of Emperor "from butchers and bakers." Acceptance, he commented, would have implied submission to the abhorred principle of popular sovereignty and denial of kingship "by the grace of God."

The Constitution, embodying a democratic unified Reich under a constitutionally restricted monarchy, remained a scrap of paper. Only 27 of the smaller states accepted it; Prussia, Austria, and the kingdoms, with the exception of Wuerttemberg, rejected it. Dynastic interests and reaction prevailed again over national unity and liberalism. The Assembly had no power to enforce it, the armies remaining steadfastly loyal to the dynasties. Taking courage from the evaporation of revolutionary fervor, the governments easily crushed the Revolution. Thousands of German liberals and democrats, the flower of the bourgeois intelligentsia, fled to the hospitable shores of the United States.

Once more the dream of German national unity was frustrated, again by the dynasties themselves. It had become clear that the selfish interest of Prussia, as the leading German power, and of Austria, on the road to a poly-national State, were too divergent to admit reconciliation within a common constitutional frame. In the minds of the bourgeoisie, again overawed by military might, the vaguely conceived idea of popular sovereignty was no adequate substitute for the traditional submission to authority and dictation from above. The ruling classes were not willing to surrender power and privileges. No outstanding popular leader could take the helm. Moreover, German national unity was also a European problem, and none of the great powers was ready to tolerate disturbance of the political equilibrium caused by a Germany strong through unity.

Bismarck and Prussia

In spite of the victory of the conservative reaction over the liberal bourgeoisie, the period of unbridled absolutism of the

"pre-March" (*Vormaerz,* i.e. the time before the March Revolution of 1848) had passed. In almost all German states the revolutionary upheaval brought about the transition from absolute to constitutional monarchy. Existing constitutions and political institutions were modernized, all states received constitutions.[1] Most of the feudal privileges disappeared, liberal civil rights were generally recognized, the idea of corporative representation of the privileged classes was replaced by modern representation as political right of the individual citizen. Judicial organization was divorced from administration, trial by jury in criminal cases, the beginning of local self-government, modernization of procedure and legislation heralded the end of the feudal and the beginning of the liberal epoch in Germany. The South German states especially reached the level of liberal rights in France. A new wind blew even in Prussia, in spite of a temporary triumph of the conservative reaction. The King granted a Constitution, January 31, 1850 (an "octroyed" constitution), inaugurating the transformation of Prussia into a constitutional monarchy. Its most glaring defect was the introduction of an electoral system which was intended to stabilize from the outset the domination of the Conservative party in the new parliament.

The famous "three-classes electoral law" *(Dreiklassenwahlrecht* of May 30, 1849) divided the voters for the lower chamber into three classes according to the taxes assessed; each class was entitled to elect the same number of electors in whom rested in turn the final election of the deputies. The actual voting power of individuals was widely different in view of the fact that the first class consisted of only a few voters in each district, mainly rich landowners; the second class, more numerous, the other wealthy people; while the third class embraced practically the vast majority of all voters. Thus, under this utterly undemocratic system, the landowning Conservatives and the affiliated stratum of the rich bourgeoisie obtained in all elections invariably a representation far beyond their numerical strength, amounting most of the time to a complete control of the lower house by the Junkers and their allies. At the same time the Upper House *(Herrenhaus),* a chamber of peers, was the unchallenged monopoly of the hereditary aristocracy, with an additional number of high dignitaries from Church, State, and cities nominated by the Crown. For

[1] The only exception was the miniature state of Mecklenburg-Strelitz, the medieval museum piece of Germany, which remained without constitution until 1918.

seventy years numerous attempts to reform this utterly unjust and arbitrary electoral system were frustrated by the Prussian Conservatives. The refusal to modernize the electoral law was a contributory cause for the internal breakdown of Germany at the end of the World War.

Another peculiar feature of the Prussian constitution, destined to become a damaging constitutional heritage of all German constitutions down to our day and one, at that, which was in the last analysis instrumental to Hitler's seizure of power in Germany in 1933,[1] consisted in the power of the King to rule by decree, without parliament, in case of an emergency (*Notverordnungsrecht*). In many other aspects, however, the Constitution followed the pattern of the Belgian Charte of 1831, which had much influence on most of the German constitutions of the period.

But while in the West constitutional arrangements which were essentially similar to the German pattern led to the establishment of the liberal and, later on, the democratic parliamentary monarchy, Prussia's political trend veered unmistakably towards the authoritarian monarchy. The Crown, on the stable "parliamentary" basis of the reactionary Conservative Party, used the Constitution for camouflaging outright authoritarian government. Liberal rights were discarded or ignored, and the Prussian reaction put the clock back to the time before 1848.

A "New Era" began with the accession to the throne of William I (1858-1888) and the appointment of Otto von Bismarck to the office of Prussian Prime Minister. William was equally remote from the reactionary romanticism of his predecessor as from liberal tendencies; but he realized that only genuine constitutionalism would enlist the support of the economically powerful liberal bourgeoisie for the reconstruction of the Reich under Prussian leadership.

The Prussian Constitutional Conflict

In the early years of William's reign the crucial conflict between authoritarian and liberal principles occurred, the outcome of which was to determine the future form of government in Germany-Prussia. It centered around a typically German issue, namely, the military organization (*Wehrverfassung*). The problem was, in short, whether or not the army should be brought under

[1] See *infra* p. 367 f. on Art. 48 of the Weimar Constitution and p. 417 on Hitler's seizure of power by way of an "Enabling Act."

parliamentary control. The Liberals refused to adopt the military reform plan of the government, which amounted to an extension and intensification of the three years' military service. Bismarck insisted that the parliament should not interfere with the sacrosanct domain of the military preparedness, which as he well knew would be decisive for the impending conflict with Austria. The Liberals, especially the left wing "Progressives" *(Fortschrittspartei)*, commanding an absolute majority in the lower Chamber after the elections of 1862, insisted on the reduction of conscription to two years, as well as on continuous parliamentary control of the entire army administration. The Progressive majority was unable to come to terms with the Conservative cabinet of Bismarck and Roon. On September 22, 1862, Otto von Bismarck had been appointed Prime Minister of Prussia. On the following day the Diet refused to grant the expenditure for the military reform. It should be remembered that the sixties of the last century were the heyday of constitutional parliamentarism in England and that even Napoleon III was forced at that time to liberalize his dictatorship. On the outcome of the conflict depended whether Prussia-Germany would finally turn to parliamentary government of the Western pattern instead of the personal regime of the Crown scantily disguised as monarchical constitutionalism. Behind the parliamentary majority stood the Prussian people, awakened to political consciousness and fully aware of the magnitude of the issue involved.

The constitutional crisis around the military reform ended with the victory of the Cabinet and the defeat of the parliamentary opposition. Bismarck declined to resign or to abandon the military proposals, and went ahead with the execution of the budgetary propositions for which the Diet had refused authorization. Since Bismarck was backed by the army and the public officials loyal to the Crown, neither the parliamentary majority nor the people united in opposition against the high-handed act of lawlessness of the Cabinet were in a position to resist short of an open revolution. Power politics, disguised as flimsy legal argumentation, crippled German liberalism at the very first opportunity. The path towards a constitutional monarchy of the true parliamentary pattern was blocked until the defeat of Germany in the World War.

The deadlock of the Prussian conflict was finally broken when Bismarck justified, in two victorious wars, before the docile and patriotically inflamed masses the wisdom of his lawless action.

The victory over Denmark (1864), an experimental or "localized" campaign of a rather shabby nature against a weak neighbor, impressed the embittered bourgeoisie little; but on the day of the victory over Austria at Koenigsgraetz (July 3, 1866), which opened the way to German unification under Prussian hegemony and with exclusion of Austria, the Progressives suffered a crushing defeat in the elections. Bismarck, clever enough to seek conciliation and not revenge, asked for and received, by a new party alignment of National Liberals, indemnity for illegalities committed since 1862.

In retrospect, contemporary observers are aware that Bismarck's victory over the parliamentary majority in the Prussian "conflict" determined the course of political life in Germany ever since. An ominous precedent, it demonstrated the supremacy of successful though illegal power politics over mere faithfulness to the law. Glorified as the sublime stratagem of the strong man over parliamentary pusillanimity and political squeamishness, it left ineradicable traces on authority-minded Germans. Its impact on German politics can scarcely be overrated.

At the same time, the Prussian conflict confirmed the specific pattern of German constitutional monarchy which is so difficult for foreign students to grasp. Unlike the parliamentary system of Western Europe, where the government is strictly dependent on the continued support of the parliamentary majority while the Crown, at best, remains the stabilizer of party dynamics, under the German type of constitutionalism, elaborated theoretically by F. J. Stahl, the Crown retains its position of supreme political leadership; the government, if possible, seeking support of the parliament, leans, in the last analysis, on the Prerogative of the Crown, and may even govern against a nonconforming parliament. This system, artificial but deeply grounded in German character and tradition, operated surprisingly well under the Second Empire while Bismarck was at the helm; but the fatal deadlock was bound to come when the people and the authoritarian government could not compromise. Delayed for two generations, it came under the Weimar Constitution, when parliamentary government succumbed to presidential prerogative and finally ushered dictatorship into power.[1] Bismarck's victory over the Prussian Diet was the blow below the belt from which German democracy never recovered.

[1] See *infra*, p. 365 ff.

The Establishment of the Second Empire. The End of the German Bund and the Solution of the Prussian-Austrian Conflict

The German *Bund,* temporarily eclipsed by the Revolution of 1848, resumed its shadow-life as the center for backstage intrigues between the Prussian and Austrian groupements. Bismarck, at that time (1851-1859) Prussian delegate to the *Bundestag,* operated adroitly for alienating Prussia and Austria. After Austrian setbacks in the Italian war of liberation (1859-60) the conflict between them headed for the climax. Liberal public opinion, inspired by the Italian unification and organized in the *Nationalverein,* became aware of the need for a fundamental reconstruction of the *Bund* as the constitutional frame for a liberal and united Germany. The joint attack of Prussia and Austria on Denmark (1864) could not fail to lead to new and bitter controversies. Finally, in 1866, in a short and strategically brilliant campaign—the celebrated model of a *"Blitzkrieg,"*—Prussia and her North German satellites defeated Austria and her rather lukewarm allies, the South German Kingdoms, Hanover, Saxony, and other members of the *Bund.* The latter, by war among its members, was automatically dissolved. Bismarck spared Austria, but enlarged Prussian territory by the incorporation of Hanover, Schleswig-Holstein, and considerable parts of Western Germany. Technically, the process resembles strikingly the creation of "Greater Germany" after 1938.

The North German Bund (1867-1870)

Thus, the century-old rivalry between Prussia and Austria, the Hohenzollern and the Habsburg dynasties, ended in favor of Prussia; Bismarck, whose Prussian interests by far outweighed his German nationalism, could realize the long-cherished plan of unifying Germany under Prussian hegemony. Elastically avoiding the pressure of France, he contented himself at first with the unification of Northern Germany, but kept the door open for later accession of the German states south of the river Main. A Reichstag elected on the basis of the older law (of 1849) with universal suffrage was to discuss, though not to decide on, a new Constitution which, drawn up by Bismarck himself, was to be accepted by the member states of the new Confederation.[1] In

[1] Election of the first Reichstag took place on February 2, 1867; the parliament met from February 23 to April 17, 1867; the new Constitution was accepted by 250:53 votes.

June, 1867, 22 German states ratified it. The new Constitution entered into force on July 1, 1867.

The North German *Bund* was more than an alliance between sovereign princes or a loose federation between independent states; it was the creation of a new State endowed with sovereign statehood, distinct as such from the members composing it, binding, by its action, the individual members which submitted thereby to the new unit. At long last the true type of a federal State had been reached. The political structure of the new State reveals already the fundamental lines of Imperial Germany. Legislative power was vested conjointly in the Federal Council (*Bundesrat*), a committee of delegates instructed by the governments of the member states, and the Reichstag, as the national representation of the citizen-subjects of the states, elected on the basis of universal suffrage. It may be noted here that Germany was the first of the great powers to introduce the full democratic manhood suffrage which did not exist at that time in France, England, or the United States. Executive powers were vested in the King of Prussia, in his various capacities as federal President, Commander-in-Chief, etc. The characteristic feature in this strange frame of a federal State composed of monarchies and republican Free Cities was the almost complete identity of Reich authorities and Prussian authorities, thus reflecting the hegemonial position of Prussia within the federal State. Bismarck, as the Prussian Prime Minister, was the leading political officer of the *Bund*. Decrees of the federal executive, Bismarck conceded finally, were to be issued in the name of the Confederation, but subject to his counter-signature as federal Chancellor, who thereby assumed responsibility for the acts of the executive. Responsibility, in terms of the peculiar version of German constitutionalism, meant responsibility towards the executive and not towards the legislative branch, a situation which American students, accustomed to the absence of parliamentary government in their own country, will not fail to understand.

The Establishment of the Second Reich (1870-71)

The last stage of complete unification of the German nation, by accession of the South German states to the North German *Bund*, was again accomplished through a victorious war. The main obstacle at this juncture was the France of Napoleon III. Playing a masterly game of diplomacy, Bismarck delayed the final showdown until German public opinion and the other great

European powers were prepared for a pan-German attack on France. Prussia's hegemonial interests coincided here with the all-German will to curb France. By granting considerable "reserved rights" to the South German sovereign states, Bismarck overcame the susceptibilities of influential particularistic factions in Bavaria and elsewhere. In the patriotic outburst shrewdly fomented by the famous "dispatch of Ems," Bismarck adroitly goaded the romantic King Louis II of Bavaria to take the lead. Entry of the South German states, after armies of all German states had fought in the brilliant campaign leading to Napoleon's defeat at Sedan (September 3, 1870) enlarged the North German *Bund* to the German Empire. Legally the Second Reich is based on the Versailles Treaties of November 15-25, 1870. The Bavarian King, again at Bismarck's urging, offered the Imperial Crown to the Prussian King. On January 1, 1871, the German Empire was reconstituted.[1] On January 18, 1871, in the same Hall of Mirrors in Versailles where fifty years later the German Reich was to sign its defeat in the World War, King William of Prussia was proclaimed German Emperor before a brilliant assembly of ranking army officers. A newly elected Reichstag accepted the Constitution, elaborated by Bismarck himself on the basis of the November treaties. It entered into force on April 16, 1871.[2]

[1] Bavaria accepted the new order only on January 21, 1871, by a slight majority of the Diet. Bavarian particularism continued and was destined to become an important factor of internal tensions down to 1933.

[2] *Reichsgesetzblatt* (abridged hereafter RGB.), 1870, p. 63.

PART II. THE SECOND REICH: IMPERIAL GERMANY 1871-1918

CHAPTER III. THE REICH AS A FEDERAL STATE

To explain and to evaluate objectively the content and operation of the Imperial Constitution of 1871 is a task beset with great difficulties. It was in force for almost half a century (1871-1918) without visible amendments of importance. Born in victory and wiped out by defeat one may conclude that as a lasting instrument of government it was a failure. Yet it served its purpose in allowing Germany the peaceful transformation of a disorganized assortment of political units into a world power without serious deadlocks or internal disturbances.

The constitutional frame contained the following two sets of political institutions: (a) the Federal organization, drawing the line of demarcation between state rights and federal powers, culminating in the Federal Council (*Bundesrat*) as the representation of the member states; (b) the unitary organs of the Reich, namely, the Emperor (*Kaiser*) as the Chief Executive, sharing powers with the Federal Council; the Reich's Chancellor (*Reichskanzler*), as the Prime Minister of the Reich and the highest executive officer under the Kaiser; finally the national or Federal parliament (*Reichstag*), the representation of the citizens of the entire German nation, as the legislative organ, sharing jurisdiction with the Federal Council and the Kaiser. All organs thus were closely interrelated and the smooth operation of the State machine depended on ability and will of co-operation between them. It was the most elaborate system of checks and balances imaginable, which needed for its manipulation the political genius of a Bismarck and the unselfish dignity of a Kaiser like William I. For lesser spirits both on the throne and in the Chancellery handling of the many levers of the complicated machinery was a superhuman task.

Legal Character of the Reich

In spite of the preamble of the Constitution proclaiming that "the Princes conclude an eternal covenant for the protection of the federal territory . . . and for the furtherance of the welfare of the Reich," legal opinion held unanimously that the Reich was not an agreement between sovereign states or princes but a federal union, sovereign in its own right, and thereby limiting the sovereign statehood of the member states. Continuation and even dissolution was vested in the constitutional organs of the Reich proper, independent of the will of the member states. Moreover, by virtue of the peculiar structure of the amending process,[1] the Reich could at any time increase the scope of federal jurisdiction even at the expense of the state rights. The situation was thus basically similar to that in the federal union of the United States.

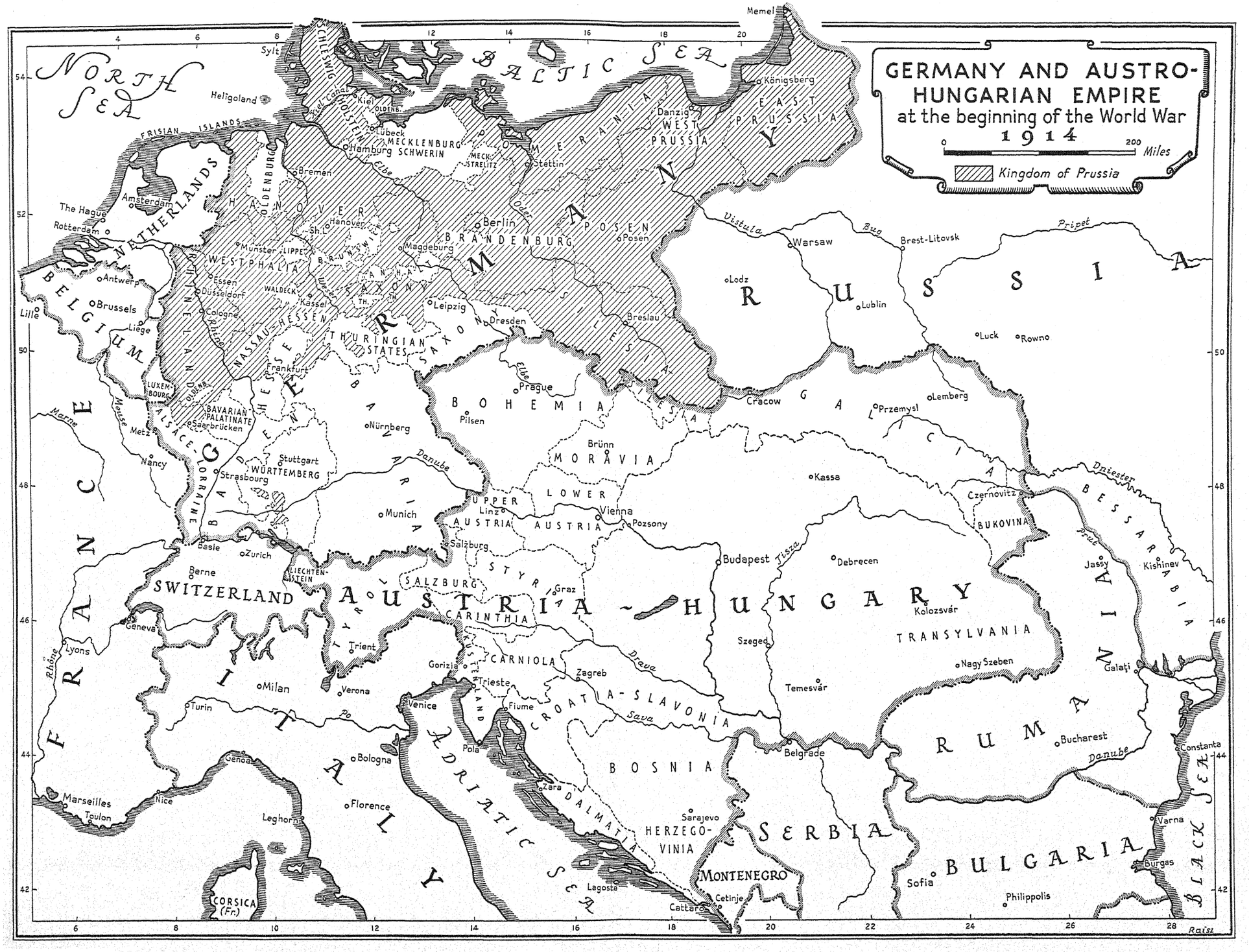
Federal Powers

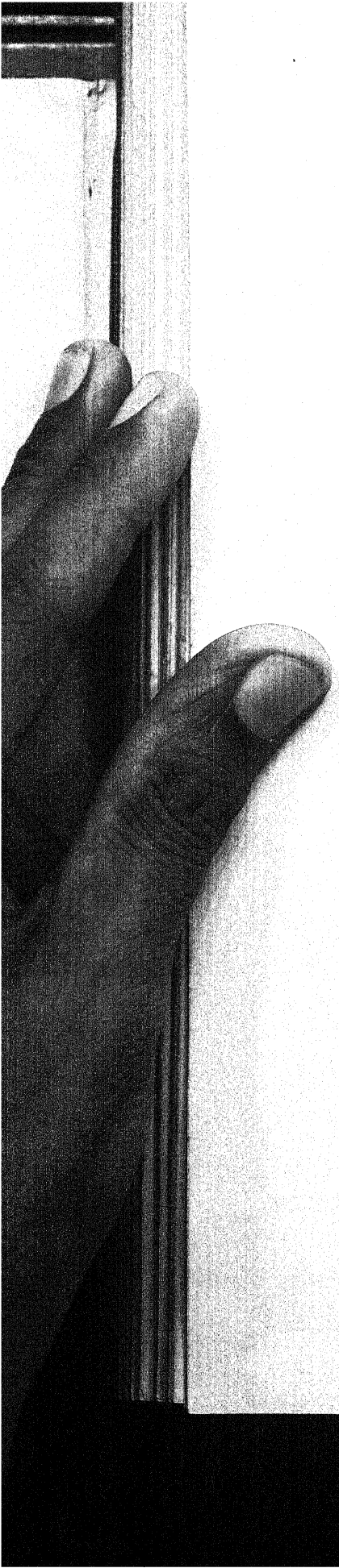
Federal statutes were binding immediately, without interposition of state legislation, on all citizens of the Reich, but could also automatically supersede conflicting state legislation (Art. 2). The principal federal powers (Art. 4) were the following: citizenship and naturalization; trade, industry, and insurance; customs and Reich revenue; currency and banking; patent and copyright; communication (railroads, waterways, post, and telegraph); finally the entire civil and criminal law inclusive of procedure; [2] military establishment and administration; press and associations.

From the outset the Reich widened the scope of federal jurisdiction through legislation and administration, in the overwhelming majority of cases with full consent of the member states. In conformity with the broadening powers of the federal union, the administration of the Reich expanded into fields and activities originally belonging to the states. In addition to the apparatus destined to fulfil the tasks originally assigned to the Reich,

[1] See *infra*, p. 320.

[2] Codification of the scattered and disorganized legal system of the Reich is one of the great accomplishments of the Imperial period. The establishment of the *Reichsgericht* (Supreme Court of the Reich), at first only for commercial matters, preceded the foundation of the Empire and was one of the main factors creating uniformity of legal administration. The major fields of civil and criminal law were modernized in the spirit of liberalism. A comprehensive scheme of federal social insurance was begun as early as the eighties of the nineteenth century. Most important of all was the codification of the civil law, in force since 1900, the work of a generation of the most eminent lawyers, blending, in a laborious effort, Pandects or Roman Law (in modernized usage) with Germanic traditions and concepts.


GERMANY AND AUSTRO-HUNGARIAN EMPIRE
at the beginning of the World War
1914
0 200 Miles
Kingdom of Prussia
NORTH SEA
BALTIC SEA
Memel
Königsberg
EAST PRUSSIA
Danzig
WEST PRUSSIA
POMERANIA
Stettin
Sylt
Heligoland
SCHLESWIG
HOLSTEIN
Kiel
OLDENB.
Kiel Canal
Lübeck
MECKLENBURG SCHWERIN
MECK. STRELITZ
Hamburg
Bremen
FRISIAN ISLANDS
OLDENBURG
HANOVER
Elbe
Oder
Berlin
BRANDENBURG
POSEN
Posen
Amsterdam
The Hague
Rotterdam
NETHERLANDS
Hanover
Münster
LIPPE
BRUNSWICK
Magdeburg
WESTPHALIA
Antwerp
Essen
Düsseldorf
Cologne
Rhine
WALDECK
Kassel
Leipzig
SAXONY
Dresden
Breslau
SILESIA
Brussels
Liege
Lille
BELGIUM
NASSAU-HESSEN
THURINGIAN STATES
Frankfurt
HESSE
Prague
BOHEMIA
Pilsen
Lodz
Warsaw
Vistula
Bug
Brest-Litovsk
Pripet
RUSSIA
Lublin
Luck
Rowno
Cracow
GALICIA
Przemysl
Lemberg
LUXEMBOURG
OLDENB.
Moselle
Marne
Metz
Nancy
ALSACE-LORRAINE
BAVARIAN PALATINATE
Saarbrücken
Nürnberg
Stuttgart
WÜRTTEMBERG
Strasbourg
BAVARIA
Danube
Brünn
MORAVIA
Kassa
Czernovitz
BUKOVINA
Dniester
BESSARABIA
Prut
Jassy
Kishinev
Munich
UPPER AUSTRIA
Linz
LOWER AUSTRIA
Vienna
Pozsony
Salzburg
Basle
Zurich
Berne
SWITZERLAND
LIECHTENSTEIN
SALZBURG
STYRIA
Graz
Budapest
Tisza
Debrecen
AUSTRIA-HUNGARY
Kolozsvár
TRANSYLVANIA
Szeged
Nagy Szeben
Galaţi
RUMANIA
Geneva
Lyons
Rhône
TYROL
Trient
CARINTHIA
CARNIOLA
Gorizia
Trieste
Zagreb
Drava
Temesvár
Milan
Verona
Turin
Venice
Po
ITALY
FRANCE
Fiume
CROATIA-SLAVONIA
Sava
Bucharest
Constanta
Danube
Genoa
Bologna
Pola
ADRIATIC SEA
Belgrade
BOSNIA
Zara
DALMATIA
Marseilles
Nice
Toulon
Florence
Leghorn
Sarajevo
HERZEGOVINA
SERBIA
Varna
BULGARIA
Burgas
Sofia
Philippolis
BLACK SEA
MONTENEGRO
Cetinje
Cattaro
Lagosta
CORSICA (Fr.)



such as army and navy, in due course a separate financial administration of Reich taxation and revenue was developed through which the Reich was made independent of the initial cumbrous system of financial grants-in-aid or contributions (*Matrikularbeitraege*) from the states.

Federal Powers and State Rights

In terms of the Constitution, powers not delegated explicitly to the Reich remained vested in the states. Yet from the beginning a marked tendency towards transferring more rights to the federal union was noticeable. This unitarian trend, however, did not prevent the states from cultivating a good deal of independence in cultural, social, and even economic matters, which gives to German federalism that aspect of varied individualities of the different states which was in line with the traditions of tribal life and its dynastic expression. The so-called "reserved rights" of the states on which in particular Bavaria, for a long time suspicious of possible inroads of "Prussianization," had insisted, proved to be in the long run of little practical importance in political life.[1] Moreover, through the adroit equilibrium of votes in the Federal Council [2] all rights of the states were shielded from federal encroachments by the arrangement of the amendment procedure, which provided that extension of federal jurisdiction implying withdrawal or limitation of state rights could not be carried if 14 votes in the Federal Council objected.

[1] Such reserved rights existed in the field of military and postal administration for Bavaria and other South German states, or commercially for the Hanseatic Cities. They were immune from federal interference except with the consent of the state affected (Art. 78 *alinea* 2). (*"Alinea"* is used to denote "paragraph" or "section" in a constitution or statute.)

[2] See *infra*, p. 319 f.

CHAPTER IV. POLITICAL INSTITUTIONS OF THE REICH

(1) The Federal Council (Bundesrat)

During Bismarck's rule as Reich Chancellor and Prime Minister of Prussia, the natural center of political gravity in the Reich was the Federal Council, a situation still reminiscent of the historical origin of the federal union from the coalescence of sovereign states. It would be misleading to compare the Federal Council to the Senate in the United States, or to any Upper House in other federal states. Though sharing, with the Kaiser and the Reichstag, in the legislative power of the Reich, it exercised also, by virtue of the peculiar position of Prussia within the Reich and the identity of the office of the Reich Chancellor with the Prussian Prime Minister, vast executive functions for which there is no parallel in other federal units. The Federal Council was composed of the delegates of the twenty-five states forming the federal union.[1] The delegates were appointed, as a rule, for an indefinite term of office by the governments of the member states, and consisted usually of high-ranking members of the civil service of the states, with specific legal training in administration and an experience in office of long standing, thus forming as a permanent institution from the beginning an admirable bureaucratic body. Acting on instructions from their governments they had no representative function whatever except that of bringing the opinions and wishes of the state governments to bear on decisions affecting the Reich as a whole and eventually the individual states. Owing to a skillfully calculated equilibrium in the voting strength of the individual states, the Federal Council served as a clearing house for the objections and contributions

[1] The names of the member states follow: Prussia; Bavaria; Saxony; Wuerttemberg; Baden; Hesse; Mecklenburg-Schwerin; Saxony-Weimar; Mecklenburg-Strelitz; Oldenburg; Brunswick; Saxony-Meiningen; Saxony-Altenburg; Saxony-Koburg-Gotha; Anhalt; Schwarzburg-Rudolstadt; Schwarzburg-Sondershausen; Waldeck; Reuss older line; Reuss younger line; Schaumburg-Lippe; Lippe; Luebeck; Bremen; Hamburg.

of the states to the common policy of the Reich. Allocation of votes to the individual state did not follow any proportional rules of size of area or population but was advisedly arranged in such a manner that either Prussia alone, or the combination of the three South German kingdoms, or even combination of smaller states could prevent an amendment of the Constitution.[1] The Federal Council was a masterly device for bringing the will of the states to bear on the Reich policies and for integrating the states with the Reich. Because its meetings were secret and no records were published, the Federal Council remained outside the limelight. Yet it was, under Bismarck, the strongest pillar of the constitutional system, the decisive force in legislation and, with the increase of Reich administration, also the administrative center of the Reich. The governments of the states offered loyal co-operation with the Reich through the medium of the Federal Council. Bismarck treated the monarchs with the utmost courtesy and consideration in order to enlist their co-operation. Bismarck as well as his successors leaned more heavily on the Federal Council whenever they encountered difficulty in dealing with the Reichstag and its parties. Only in the later period of Imperial Germany when the democratic structure of the parliament demanded a corresponding democratization of the government and the center of political gravity began to shift naturally to the parliament, power and influence of the Federal Council were bound to decline.

(2) The Emperor

Public opinion in foreign countries, still biased by war propaganda, is generally misinformed about the position of the Kaiser. He was neither the reckless autocrat he might appear to students of democratic government, nor the mere figurehead of the customary set-up in constitutional monarchies of today. By force of the constitutional provisions, the Kaiser was always the ruling King of Prussia. Both offices were combined in the person of the oldest son of the Hohenzollern dynasty. This dual function as "sovereign" (*Landesherr*) of Prussia and Chief Executive of the Reich characterizes his position in a constitutional frame which was a union of monarchical states and a few Free Cities. He may be properly described as the President of the United States of Ger-

[1] Each state, even the smallest, had at least 1 vote; Prussia had 17; Bavaria, 6; Saxony and Wuerttemberg, 3 each; Mecklenburg-Schwerin and Brunswick, 2 each. The total was 58.

many with the title and the dignity of Emperor (Art. 11). Though a genuine monarch of Prussia, he was not more than the highest executive organ of the Reich.[1] As such he was constitutionally bound to promulgate and publish without veto any law passed by the federal organs, the Federal Council and the Reichstag. Yet, as King of Prussia, he could veto indirectly, through having cast the votes of Prussia against a proposal in the Federal Council, any Reich statute. Herein lies the real power of the Kaiser: that, as King of Prussia, he was in a position to mobilize the strength of the strongest, the hegemonial, state in Germany for the purposes of the Imperial office. Deliberately, the power of the Kaiser, derived from his position as King of Prussia, enhanced his influence on politics beyond the text of the constitutional document.

But even seen from the angle of the Reich, his powers were considerable. He represented the Reich in foreign affairs and international relations, which were in fact a monopoly of the Reich; he participated in the treaty-making power of the legislative organs. As Commander-in-Chief of the army, he was in control of the military establishment, which, through a peculiar concatenation of jurisdiction, was still removed from parliamentary interference. In a state with the military traditions and ambitions of Germany, control of the army was both politically and sociologically the most important function. Last but not least, the Kaiser appointed the Reich Chancellor and the Reich officials (Art. 18).

Yet to assume that the Kaiser was still the absolute monarch of the eighteenth century would be far from the truth. To be sure, the monarch was responsible only to his conscience, and to no human authority on earth. But the Constitution provided for him a shield which protected him from being made responsible as well as it gave constitutional relevancy to his personal acts. No order, no act of the Kaiser had any validity unless countersigned by the Reich Chancellor, "who thereby assumed responsibility" (Art. 17). Thus, while the Reich Chancellor was a confidant of the Kaiser and personally responsible only to him, the Kaiser himself could act legally only if the Reich Chancellor had authorized the act by his countersignature. Most of the conflicts under the more autocratically disposed William II sprang from the inclination of the monarch to overstep the limits set

[1] Only for the Reich territory (*Reichsland*) Alsace-Lorraine and the colonies, styled "protected territories" (*Schutzgebiete*), did he act as monarch.

by the policy of his Chancellors. This peculiar situation is intelligible only in view of the German version of constitutional monarchy [1] and the absence of parliamentary responsibility of the government. On the constitutional interaction between Kaiser and Chancellor depended the success or failure of a system based exclusively on the human element. Bismarck and William I, both deeply steeped in the conviction of the monarchical principle, formed an ideal team for such co-operation. But it failed when William II's official advisors were either unable to restrain his exuberance and impulsiveness or when they were compelled to assume responsibility for acts of the monarch which threw their policies out of gear. In the last analysis, this system of mutual responsibility, combined with complete irresponsibility towards the Reichstag, was an anachronism in the democratic age, and one of the congenital misconstructions of the Bismarckian Constitution, carried over, to the detriment of constitutional government, to the position of the President under the Weimar Republic.

(3) Reich Chancellor and Reich Government

This complicated system of interlocking human relations disguised as constitutionally determined checks and balances hinged around the person of the Reich Chancellor as the capstone of the Reich edifice. During the Imperial period he was the exclusive choice of the monarch, his confidence man, on whose appointment political parties or court cliques could exercise influence only by indirection. William II, from Bismarck's dismissal (1890) to the World War, made four such choices (Caprivi, Waldersee, Buelow, and Bethmann-Hollweg) without hitting upon the man for whom Bismarck's mantle was not too wide. No established legal rules existed for determining what responsibility of the Chancellor for the acts of the Kaiser amounted to in practice. More of a moral than a legal nature, it lacked the power of political enforcement, since the parliament could not compel resignation of the Reich Chancellor. A vote of non-confidence by the Reichstag was meaningless in terms of the Constitution.[2] Only the budgetary powers of the Reichstag induced the Chancellor not to overplay his hand and to seek political bargains with the parties most inclined to support him at the time he needed them.

[1] See *supra*, p. 300, 304, 306.
[2] See *infra*, p. 331.

Originally the Reich Chancellor was only the personal representative of the Kaiser. In due course he rose to the function of head of an increasingly vast Imperial administration. Under his control and responsibility a number of Reich offices or departments operated, over which a Minister (officially styled "Secretary of State") presided. The federal Executive, at first centralized in the Reich Chancellery, was enlarged to a system of federal (Reich) ministries.[1] The Ministers, however, were only assistants of the Reich Chancellor, responsible to him alone and strictly subordinated to him as collaborators. This peculiar system which, after the brief interlude of the Weimar republic, made its reappearance in the identical relationship between Hitler and his cabinet, was called the "Chancellor principle" of ministerial organization, as opposed to the principle of collective ministerial organization under the parliamentary system where the Prime Minister is the *primus inter pares* among his colleagues and bound to them in solidarity. The adoption of this institutional device prevented also the rise of the collective ministerial responsibility as demanded by parliamentarism.[2]

As to the personnel of the leading positions in both the Reich and Prussia, and to a somewhat lesser degree in all states, it should be noted that the ministerial offices were occupied by members of the high bureaucracy who reached the top by slow promotion, by members of the high aristocracy even if they had not the legal or administrative training, and by army officers. At no time, down to the end of the Reich in 1918, could distinguished party men, parliamentarians, or outsiders at large break into the closed ranks of the privileged service men. In no country except Tsarist Russia was the social homogeneity of the governing group more tenaciously upheld.

[1] The system of separate Reich ministries evolved in successive stages—1870: Foreign Office; 1872: Admiralty (since 1889 Reich Marine Office); in 1876 the Chancellery itself was subdivided into the departments of Justice, Treasury, Post, Alsace-Lorraine, following the administrative expansion of Reich services. By that time the Reich Chancellor was no longer able to cope with the superhuman task of controlling the entire Reich administration alone. Hence, in 1878, an innovation took place which provided, by the law of March 17, 1878 (RGB. p. 7), that the Kaiser might appoint substitutes for the Reich Chancellor who might act for the latter within specific departmental confines. In 1907 the Colonial Office was added; in 1917, the Ministry for Economics; and in 1918, the Ministry for Labor. Altogether there were 11 ministries.

[2] Bismarck himself refused to admit the existence of a Reich Cabinet, which smacked of Western parliamentarism, and recognized only a homogeneous "Reich leadership" *(Reichsleitung)*, a term re-established in the Nazi set-up, which in general took up unconsciously many loose threads of the Bismarckian Constitution. When, however, under William II, a pseudo-parliamentarism developed (see *infra*, p. 330 ff), the existence of a Reich Cabinet became more a reality.

Prussia's Position within the Reich

Since it was Prussian military and diplomatic strategy which had welded together the Reich, since her territory and population amounted to about three-fifths of the Reich, it was politically only logical that Prussia occupied the hegemonial position within the structure of the Reich. This purpose, not openly admitted in the Constitution itself, was served by a number of indirect methods ingeniously devised. A union of the dignity of the Imperial Crown with that of the King of Prussia was constitutionally guaranteed. The Prussian Prime Minister, commanding the Prussian votes in the Federal Council, was at the same time Reich Chancellor and, in addition, Chairman of the Federal Council. Moreover, the Reich Chancellor, as Prussian Prime Minister, was always Prussian Minister of Foreign Affairs also. Such a vast cumulation of offices in the person of the Reich Chancellor in fact permanently stabilized Prussian ascendancy in the government of the Reich. The principle of cumulation of offices in one person—at present a common feature of the National Socialist regime—was repeated on the next lower level by appointing a number of the Reich Ministers to the position of delegates of Prussia to the Federal Council and thus integrating them into the Prussian political system. In addition, the Prussian War Office practically took care of the functions of a non-existent Reich War Office. Although in all other departments the Prussian offices were duplicated by corresponding Reich offices—a much-deplored dualism, with attendant frictions and waste—sociologically the cogwheel machinery between Reich and Prussia entailed a permeation of the Reich bureaucracy with Prussian officials and the traditional spirit of Prussian officialdom. This meant that a non-Prussian Reich Chancellor was actually dependent on a Prussian bureaucracy which knew how to prevent divergence of Prussian interests and Reich policies. Prussia possessed 17 votes in the Federal Council by which every move deemed incompatible with Prussian interests could be blocked. Moreover, since the Reich as such could not take the initiative in legislation and other decisions in the Federal Council, it had to use Prussia to get things done in the Federal Council by the so-called "Presidial initiative" *(Praesidialantraege)*. Consequently, Prussia could do much without the Reich, but the Reich practically nothing without Prussia. A conflict between Prussian and Reich interests was practically impossible.

This intricate system of interlocking competences worked surprisingly well under its creator, Bismarck. But under his successors it presented grave disadvantages: In the first place, the Reich was exposed to "Prussianization" which forestalled more liberal and democratic influences coming from the South and the West. At times the non-Prussian Reich areas were almost as anti-Prussian as foreign countries. Since the beginning of the century at the latest, reactionary trends in Prussia proper and more liberal tendencies outside of Prussia fall clearly apart, a political dualism which, in the long run, could not but lend itself to fatal internal dissensions. Already under Bismarck the Reichstag was controlled by a majority of Liberals and the Catholic Center, while Prussia was under the unbroken dominance of the Conservative reaction down to 1918. When in South Germany (1904-1906) the electoral laws for the state diets were completely democratized, the Conservatives refused stubbornly the overdue reform in Prussia. It was natural that the Weimar Constitution, taught by experience, militated against Prussian hegemony in the Republic, with the result that the Reich-Prussian dualism reversed itself; Prussia remained liberal-socialistic long after the Reich had turned to reaction. The Third Reich, avoiding the errors of both previous constitutions, crushed the dualism between Reich and Prussia under the steam-roller of the one-party State by reviving, curiously enough, Bismarck's technique of cumulation and combination of offices.[1]

Constitutional Amendment

No special procedure was prescribed for constitutional amendments. They were carried (Art. 78, *alinea* 1) by a simple majority in the Reichstag, unless objected to by 14 votes in the Federal Council. Thus Prussia as well as the three Southern kingdoms or a combination of smaller states could veto them. Few open constitutional amendments were added to the original instrument,[2] and none of them was of fundamental importance. Yet the Constitution in operation was different from the Constitution on paper because of the technique of changing it indirectly by separate statutes, without making the changes visible in the document through corrections, additions, or deletions. The result was

[1] See *infra*, p. 457 ff.

[2] From 1871 to 1918 only 12 amendments were inserted in the text of the Constitution, not counting the two important amendments leading to the parliamentarization of the Reich in October, 1938, which never came into operation. See *infra*, p. 336.

similar to that in the United States of America, where federal powers are imperceptibly enlarged by constitutional interpretations of the courts without openly amending a clause of the document. At the end of the period, the Constitution in actual operation was widely different from the Constitution as written. This technique, politically most unfortunate, was inherited by the Republic and enabled the Nazis to establish the dictatorship "legally." [1]

[1] See *infra*, p. 417.

CHAPTER V. REICHSTAG AND PARLIAMENTARY LIFE IN IMPERIAL GERMANY

Electoral System

While, on the one hand, the Federal Council, as the collective will of the states, reflected the federalistic elements of the Reich, and the Kaiser, together with the Reich Chancellor, incarnated its monarchical structure, the Reichstag, on the other hand, was the corporate expression of the unitarian and democratic ingredients of the Imperial Constitution. Operating at first in the shadow of the monarchy and of Bismarck's towering personality, parliament grew, with the increasing industrialization of an agricultural country, so much in stature that by 1900 its importance was co-equal to that of the other agencies of political organization. Yet political importance was not identical with political power, and the anomaly that a fundamentally democratic institution was prevented from developing into a genuine instrument of popular will was, in the last analysis, responsible for the outbreak of the World War as well as for Germany's disastrous defeat.

Eligible to the Reichstag as deputy (*Reichstagsabgeordneter*) was every male German citizen after the completion of his twenty-fifth year. Entitled to vote was every male German citizen at the same age of twenty-five. The franchise was universal, disqualifying only the usual categories—the insane, the bankrupt, those deprived of civil rights for committing felonies, etc., and it was direct, secret, and theoretically equal. It was not by proportional representation. But equality of voting power was practically brought into play by the fact that, throughout the Reich, the division into electoral districts had, approximately, been made with a view to keeping state lines in mind; for every member state, however small its population might be, was entitled to at least one deputy. The value of a vote in the smaller units was thus much greater than in the larger states. Moreover, as far back as 1869 the number of deputies had been fixed at 397. There had

been no distribution of seats that had admitted of making allowance for the shifting of population from agrarian to industrialized sections, a situation which favored the Conservative parties in the rural districts at the expense of the Socialist and Liberal parties in the cities.

The record of the voting procedure, in conformity with the law-abiding habits of the Germans, is spotless as in no other country. Illegal practices were unknown throughout the whole period. Elections were based on the single-member constituency; the candidate who obtained 50% of the votes plus one was elected. In the case of one candidate who had failed to obtain the absolute majority of votes cast, a second election ("run-off" election, *Stichwahl*) was held between the two leading candidates. This system had the great advantage over later experiments in voting technique in that it focused the interest of the voters on the individual person of the candidate instead of on a more or less anonymous party ticket. The election was more a contest between personalities than an endorsement of abstract party programs. On the other hand, it operated usually against the Left parties when in run-off elections Right and Center parties combined to defeat the Left contestant.[1]

Functions and Powers of the Reichstag

The exclusive function of the Reichstag was participation in the legislative process, together with the Federal Council and the Kaiser. Practically, the Reichstag had its fair share in initiating legislative bills, although proposals originating either from the Reich government or from the member states, through the medium of the Federal Council, had politically an edge on bills emanating from the Reichstag. In addition to collaboration in federal statutes, the Reichstag had to pass on the annual budget and other financial transactions, such as loans (Art. 69, 71-73); it participated in the enactment of treaties involving alterations of the law (Art. 70, *alinea* 3, 11). The deputies enjoyed the customary parliamentary immunities, such as freedom of speech and from arrest and criminal proceedings during sessions, the right of interpellation (Art. 27, *alinea* 1), frequently used for venting criticism of the government and, in the later period, also of the Kaiser, though only by cautious indirection. As a body, the

[1] In 1907 the parties supporting the Government obtained 5,1 million votes and 219 seats; while the opposition, with a poll of 6,2 millions, received only 178 seats.

Reichstag had autonomy in establishing its Standing Orders and conducting its business. Formally, at least, it was a full-grown parliamentary body of the Western pattern, although the Kaiser summoned, adjourned, and could dissolve it between regular elections, fixed at first for every three, since 1888 for every five years.[1] If the Reichstag was unable to wrest political power from the Government, it was less the fault of incomplete institutionalization than of the submissiveness of the bourgeoisie, which failed to utilize a suitable instrument for establishing political ascendancy.

Political Evolution of the Reichstag 1871-1914: (1) Bismarck and the Reichstag

Though Bismarck had bestowed on the parliament in the new Reich the ultra-democratic quality of universal suffrage, he considered from the outset emergence of Western parliamentarism, entailing control of the Government by fluctuating party majorities, as the greatest threat to his work. His political realism conceived the Reich as rooted in the co-operation of the monarchical heads of the Empire and the states congregated in the Federal Council; public opinion as reflected in parliamentary parties was to follow only the leadership of the Government. His conception of government was authoritarian, or, in an untranslatable German term, that of the *Obrigkeitsstaat*. As long as he held the reins in his strong hands, the memory of the futile parliamentary struggle against the Government in the Prussian constitutional crisis[2] as well as his personal prestige were too strong to admit rise of the parliament to a co-equal partnership. Conditions for the evolution of parliamentary government would have been auspicious, since the parties were from the beginning national parties, extending, irrespective of state lines, over the entire territory of the Reich, and since collaboration of the Parliament was constitutionally provided for for enacting statutes and passing the budget. The fundamental obstacle to a full-fledged parliamentary system consisted in that the Reich Chancellor and his ministers were responsible for the conduct of the Government only to the Crown. This weakness—considered by Bismarck as a virtue—prevented formation of strong and dependable parties behind the Government as well as the habit of

[1] In spite of frequent conflicts between the Reich Government and the Reichstag, dissolutions were relatively rare. Of thirteen parliaments since 1871 only five (1878, 1882, 1890, 1893, 1907) were dissolved.

[2] See *supra*, p. 304 f.

combining groups hostile to the Government into a strong and dependable bloc of a parliamentary opposition. Neither a Government majority nor an opposition minority was officially recognized or practically in operation. German political individualism —strangely blended with general submissiveness to authority— was responsible for the continuation of the traditional multiple party system. No single party ever had an absolute majority; parliamentary majorities were always composed of temporary and changing coalitions between major groups. Since, however, the Reich Government needed support of the parties for legislation and budget, it evolved what has been (and still is) called by the misleading name of "the Government above the parties," which amounted in practice to the playing off, by the Government, of all parties against each other without allowing them to coalesce and solidify into homogeneous political majorities. Consequently, the Reich Government governed with changing majorities formed *ad hoc* for the aims of actual political expediency. Support had to be bought by the Government through political favors for individual parties and even individual party leaders, through bargaining, administrative benefits, and office patronage. Yet at no time before 1918 did log-rolling practices between Government and parties succeed in bringing parliamentarians or outside-politicians, whatever their talents, into the ministerial offices of the Reich or Prussia, which throughout the whole period remained strictly monopolized by the ruling class of the aristocracy, the civil service, and the military caste.[1]

Under this system no *ésprit de corps* of the parliamentary parties or personnel could develop. A victory of a party at the elections meant little because the Government, enlisting support of another coalition, could at any time checkmate it. The parliamentary climate was one of mutual distrust and latent fight. The Reichstag considered as its main function that of repelling attacks of the Government, while the latter tried to forestall encroachments of the former on its jurisdiction and administration. In spite of temporary periods of truce, the latent dualism between Government and people, ineffaceable heritage of German politics, was the ultimate reason that authoritarian Government (*Obrigkeitsstaat*) could not be replaced by popular determination of politics (*Volksstaat*).

[1] It was a sensational innovation when, in 1907, a Jewish liberal banker, Bernhard Dernburg (incidentally the best man who ever held the office), was appointed Secretary of the Colonies.

Party Life in Germany 1871-1914

Two periods should be distinguished in the evolution of party life in Imperial Germany, separated by the dismissal of Bismarck in 1890. During the first period, the German version of constitutionalism prevailed, that is, unchallenged leadership of the Government, to which the parliament on the whole voluntarily submitted. During the second span, authoritarian Government was slowly converted into what has been aptly described as "crypto-parliamentarism," a spurious form of irregular non-recognized influence of parties and parliament on the conduct of policies without bringing the Government under genuine parliamentary control.

After the foundation of the Reich, Bismarck ruled with the co-operation of the National Liberal Party, since 1876 by far the most powerful political party in the Reichstag. For almost a decade the Liberals supported the Chancellor, bound to him by common hostility against the new Catholic Party of the Center, against which Bismarck waged his most obstinate and most futile battle (the so-called *Kulturkampf*). The old problem of the army budget, considered as a domain of the Royal Prerogative, which Bismarck wanted permanently exempt from parliamentary control, was compromised in 1874 by fixing the size of the army for seven years. Dominance of the super-government of the military cabinet of the Crown, which maintained exclusive responsibility for the military establishment, was to continue throughout the entire period, and was destined to become the main cause for the final defeat of Germany in the World War. As lasting result of the alliance between the National Liberals and the Reich Chancellor appears retrospectively the liberal reform legislation of the seventies by which the Reich, ridding Germany of the last shackles of the feudal society, created economic and civil equality and a complete system of individual rights by no means inferior to the "Bill of Rights" of Western states and fully protected by federal statutes and federal courts. Collaboration with the National Liberals ended in 1878 when Bismarck sponsored a complete reversal of fiscal policies by introducing protective tariffs. With increasing years Bismarck became even more averse to the assertion of parliamentary rights and the establishment of a parliamentary tradition. Having deprived himself of the backing of the Liberals, he waged for the next decade relentless war against their party, leaning intermittently

on the Conservatives and even compromising with the Catholic Center party. From this period of parliamentary anarchy, inducing the Government to seek support wherever it could be found or bought, political life under the Empire never fully recovered.

The dynamics of party life in this first period of the Empire were complicated not only by the splitting of both Conservatives and Liberals into sub-groups with divergent political aims, but even more by the appearance of a religious or denominational party, the Catholic Center party (called at that time also "Ultramontanes"). Founded for the defense of Catholic rights under a Protestant Empire, intrinsically anti-Prussian, forever intent upon the preservation of states rights, and under the insistent though subtle influence of the Holy See, the Center Party was the rallying point for Catholics of all classes throughout the Reich —though many Catholics always have voted for other parties. As the only party in Germany without class prejudices, the party, in view of its social structure, could turn right or left. It remained the most stable element in German party politics and maintained its voting strength down to 1933 almost untouched by fluctuations in the electorate. Moreover, as an admirable training ground for political leaders, some of the ranking parliamentarians came from the Center Party (Windhorst, Spahn, Wirth, Bruening). At first Bismarck threw his whole weight against the Center Party. But the *Kulturkampf,* the most important event of the seventies in internal politics, was conducted in vain. The party, unshakable by persecution, became the most powerful and closely knit unit within the parliament, gaining strength particularly from the progressing disintegration of both the Conservatives and the Liberals.

The second element constituting a permanent obstacle to the evolution of a genuine parliamentary system was the rise and the attitude of the Socialist Party (*Sozialdemokratische Partei*). The Socialists, at that time in their revolutionary teens under the influence of Marx' and Engel's social doctrines, were outlawed in 1878 by the notorious Anti-Socialist Act.[1] In spite of its suppression during twelve years and the most arbitrary persecution of its adherents by police and courts, the Socialist Party, still participating in the elections, constantly increased its hold on the laboring masses and staged a triumphant comeback when,

[1] Without the slightest justification, Bismarck connected the party with a plot to assassinate the old Emperor. The situation closely resembles the outlawing of the Communist Party by the Nazis after the Reichstag fire in February, 1933. See *infra,* p. 414.

against Bismarck's wish, it was readmitted in 1890. Although in due course the revolutionary tendencies of the unmitigated class struggle were superseded largely by a more reformist attitude ("revisionism"), the Socialist Party persisted in its unstinted hostility to the bourgeois and authoritarian State. Rapidly drawing the masses of the working population into its fold, the party became, by 1903, the second strongest; and, after a setback through handicaps of the run-off elections in 1907, the strongest party of the Reichstag in the elections of 1912 (110 seats). Led by capable and intelligent leaders (Liebknecht, Bebel, Singer), the Socialists remained in irreconcilable opposition to the State and joined the ranks only under the emotional pressure of war patriotism in 1914.

Political Evolution of the Reichstag, 1871-1914: (2) The Reichstag under the Reign of William II

Kaiser William I died in 1886 at a biblical age; he had earned the sincere esteem of patriots by his tactful and dignified submission to the will of the Iron Chancellor. He had served the state as the constitutional monarch *par excellence.* His son, Emperor Frederick III, had given auspicious signs of true understanding of the liberal and democratic spirit of the age. Fatally ill when ascending the throne, he was succeeded, after a reign of a "Hundred Days," by his son, William II. Even today, twenty years after the end of the World War, the portrayal of "the forgotten man of Doorn" is still distorted. Objective historical judgment has absolved him of much of the guilt laid at his door for the outbreak of the war as well as for its disastrous outcome for Germany. Endowed with considerable natural intelligence, well-educated, and carefully groomed for his office, he was handicapped by an impulsive and unbalanced temper and a dangerously facile oratorical talent. Under a strong-willed and tactful Chancellor, he would have made a constitutional monarch of no mean caliber. But in the environment of a semi-feudal and popularly uncontrollable *"camarilla"* and in the climate of Byzantine adulation of the court society, he developed rapidly a regime of personal autocracy for which, in the last analysis, Bismarck's misconstruction of the Imperial Constitution was as responsible as were his own deficiencies. With Bismarck's dismissal by the young monarch began what is known in German politics as the New Deal (*der neue Kurs*).

The period from the accession of William II to the World War may be characterized by two mutually exclusive political currents. On the one hand, Bismarck's heritage of governing with changing majorities of differently composed blocs of coalition parties without stable support and stable opposition developed slowly into a more active participation of parliament in shaping policies. On the other hand, there began, once Bismarck's genius in the conduct of foreign politics was eliminated, the zigzag line of foreign politics, at once hesitant and boisterous, through which Germany drifted irresistibly into the World War and defeat. It was because of the anachronistic structure of the Bismarckian Constitution that the personal regime, fostered by the lack of responsibility of the Chancellor towards the parliament, could not be counterbalanced by genuine parliamentarism.

The Kaiser, constitutionally entitled to his own choice of the Reich Chancellor, failed to pick the right man. Four Chancellors served under him,[1] none without personal merits, none able to master the tangle of parliamentary party life or to control the temper of the ambitious monarch. The consequence was that the dualism between the Government and the parliament, though at times compromised, remained the permanent weakness of the German political system. Germany, neither a parliamentary state nor an absolute monarchy, was yet affected by the worst features of both.

Seen from the angle of party life, the period is dominated by the continued decline of the Conservative and Liberal parties on the one hand, the stability of the Center Party and the rapidly increasing political strength of the Social Democratic Party on the other hand. Though outwardly little was changed after Bismarck's enforced withdrawal from the political stage, it became evident under his successor, von Caprivi, that no Reich Chancellor could remain in power unless able to create for himself a favorably inclined parliamentary majority. The change in political equilibrium became more visible under Prince von Hohenlohe's Chancellorship. No longer could he mold parliamentary majorities according to his program, as Bismarck had done, but was compelled to adjust himself to the wishes and the support of the parties on which he leaned. The authoritarian period of German political life, in which the power of the Royal Prerogative de-

[1] Caprivi (1890-1894), a general; Prince Hohenlohe (1894-1900), a South-German nobleman; Count (later Prince) von Buelow (1900-1909); and von Bethmann-Hollweg (1909-1917).

cided, in the last resort, trend and issues of political life, had definitely come to an end. The Center Party held the key position, and government majorities were formed mainly by the Center, the National Liberals, and the Conservatives.

In 1900, Bernhard von Buelow, previously Foreign Secretary, was appointed Reich Chancellor. A brilliantly cultured, versatile man and courtier, though unprincipled and spineless, he failed to convert parliamentary life from disorganized log-rolling practices to well-established responsibility. Embarking on *Weltpolitik* and encountering thereby the competition of the World Powers, the Reich would have needed a stable parliamentary situation which was impossible of realization. Buelow was the inventor of a new experiment in politics, namely, the formation of a permanent coalition or bloc of parties favorable to the policies of the Government and prepared to support them generally and not *ad hoc* of each specific legislative measure. It was the closest approach to genuine parliamentary government which occurred in Germany before the Weimar Republic. For most of the time the Reich Government leaned on a bloc of Conservatives and the Center with the Liberals, all equally intent on curbing the rising Socialist Party; but the coalition broke in 1909, when the Conservatives were unwilling to grant a reform of the obsolete Prussian electoral law and a progressive financial reform demanded by the Liberal partners. In spite of this setback, another sign of an approach to a genuine parliamentary system could not be overlooked. The parties on which the Government had to depend for carrying out its program influenced the choice of the ministers with whom they were to collaborate. Most important of all, for the first time in German history, even the Reich Chancellor (von Buelow) had to resign when his financial reform foundered on the opposition of the Liberal partners in the Government coalition.

Had the Kaiser, after von Buelow's resignation, been able to read the handwriting on the wall, the selection of his successor would have been left to an understanding with the majority parties without which by that time no Chancellor could govern. Yet von Bethmann-Hollweg was again the choice of the court society. Where a statesman with vision was needed, an efficient civil servant took his place. His task was doubly difficult because of the declining prestige of the Monarch and the continuous failure to form a workable parliamentary coalition. The situation

was that the Reich Chancellor was still appointed by the Kaiser without the Reichstag, but could not remain in office unless supported by a parliamentary majority. While von Bethmann-Hollweg drifted along mainly with Conservative-Center majorities the dissatisfaction of the democratized masses exploded, at the election of 1912, in a sweeping victory of the Social Democratic Party, now by far the strongest party both in the Reichstag and in the electorate. The new Reichstag, responsive to the verdict of the people, went one step further towards parliamentary government by introducing, through a reform of the Standing Orders, the institution of a vote of non-confidence against the Reich Government.[1] It was too late. Behind the façade of pseudo-constitutionalism already loomed the military super-government, entrenched in the Royal Prerogative of the Kaiser and the court clique, which was to become the germ of military dictatorship during the war. Yet the internal clash which was bound to come was once more headed off by the patriotic emotionalism of all parties and classes when the World War broke.

General Evaluation of the Imperial Constitution

Appraised retrospectively, Bismarck's Constitution appears as a fiasco in almost all its fundamental designs. The complicated machinery of the Federal Council for out-balancing particularistic and dynastic tendencies was unnecessary because the states were willing to co-operate and bound to fall in line with an expanding national economic structure, which was perforce unitarian. Careful safeguards, inserted for the stabilization of the monarchical principle as the political center from which all power radiates, were, in the long run, more a disintegrating than a consolidating element. The Reichstag acquired within fifty years only the political power of negation. It could balk at leadership of the Government but not assume political responsibility. Though as hardworking and technically efficient as any other parliamentary body of the period, it exhausted its abilities in futile obstruction. The seeds of Bismarck's anti-parliamentarian intransigence had grown high; failure to acquire real political power resulted in lowered prestige. Finally, the commanding position of the Reich Chancellor, tailored to measure the gigantic frame of the Iron Chancellor, was constantly squeezed in between

[1] It was carried, for the first and the last time under the Empire, in the so-called "Zabern affair" in 1913; the Reich Chancellor ignored it superciliously.

a capricious monarch and an obstinate parliament, which had to be induced to co-operation by cajolery and threat. In his capacity of Prussian Prime Minister, he was forced to orientate Reich policies to suit Prussian selfish wishes, and Prussia was controlled by a semi-feudal aristocracy. Prussian bureaucracy, efficient as it was in purely administrative matters, balked at progress in the Reich. Unlike England in the era of industrialization, the landowning gentry of the *Junker* class had steadily assimilated the new plutocratic bourgeoisie, infecting it with its outmoded social tenets, its military spirit, and constituting an unbreakable ruling class supporting and supported by the high officials, church dignitaries of the Protestant clergy and the army. On the whole, Germany, under the most democratic electoral system of the time, was ruled by the Prussian reactionary gentry. Only in Southern Germany, under the patronage of the Center Party and more accommodating dynasties, was the ruling society more liberalized and open to democratic ideas. To be sure, the failure of the Bismarckian Constitution was due to failing personalities; but no constitutional system can rely on the rise of supermen able to overcome its congenital misconstructions.

And yet in fairness it should be stated that the Imperial Constitution gave to the German people not a few priceless benefits. Political deadlocks occurred, but none of them led to revolutionary unrest or even sizable local disturbances. Moreover, in these fifty years of peace, Germany, hardworking, law-abiding, and resourceful above praise, had become prosperous. Germany at the end of the period was a World Power, economically second only to the United States and on an equal footing with Great Britain.

What the individual citizen cherished most was the admirable administration of daily life, carried out to perfection by the most efficient administrative technique of the period. Under the paternal wings of his police he felt safe and comfortable. Awareness of the rule of law in all walks of life; meticulously protected by courts and officials; honesty and efficiency of the administrative services; a modernized and socially adjustable legal system; social insurance for the poor, sick, and aged; and the full enjoyment of civil liberties within the limits of the general laws, made the average German citizen oblivious of what shortcomings in his political system others might discover. The militaristic character of public life suited his tastes and traditions, and police supervision had not prevented an unparalleled enfoldment of

cultural activities. In science, education, and the arts Germany led the world. When measured in the irrational terms of the happiness of the people, the Second Reich, compared with the Weimar Republic and the National Socialist dictatorship, may appear to many as the Golden Era of German history.

CHAPTER VI. WAR GOVERNMENT 1914-1918

For a nation at war Bismarck had stressed unqualified primacy of the political over the military leadership. Clemenceau expressed the same idea more cynically by the statement that war was too serious a business to be left in the hands of the generals. Confronted by the combined military, economic, and moral resources of the world, Germany sinned flagrantly against this fundamental maxim and lost the war. The War Government in Germany was a military dictatorship to which the constitutional set-up had lent itself more readily than did democratic rule in other countries. Dictatorship of the army commanders effaced completely the Kaiser and the Federal Council and obtained control over the Reich Government with its civilian officials; last but not least, the Reichstag also meekly submitted. After 1916, military dictatorship was factually centered in the person of General Ludendorff. Considered a brilliant tactician in terms of Military Academy standards, he proved only a mediocre military strategist. Obsessed by one of the pernicious by-products of the training of the elite in the Prussian General Staff, the ability to drown vision by organization, he lacked utterly both understanding and willingness to understand non-military matters, which operate under different laws. He symbolized unbridled militarism gone mad and let loose, without moral restraint, on the machinery of the Government. Yet the National Socialist regime is patterned on Ludendorff's War Government to such an extent that, retrospectively, Germany in the last war appears merely as the dress rehearsal for the totalitarian application of Ludendorff's technique by the Third Reich.

The legal basis for the transformation of pseudo-constitutionalism before 1914 into War Government was provided by the declaration of the state of siege (*Kriegszustand*) over the whole territory of the Reich, by which executive powers were transferred from the civil to the military authorities; in each district a General-in-Command acted formally as representative of the

Kaiser as the Supreme War Lord, materially as agency of the G.H.Q. in all civilian matters. The staff (*Generalkommando*) consisted mainly of retired or disabled army officers, most of whom lacked training in administration. Under the shortsightedness and arbitrariness of these amateurs in military garb, the heroism of the civilian population was bound to wear thin. In addition, the Reichstag had passed, in the patriotic fervor of its first meeting on August 4, 1914, a statute [1] conferring the most sweeping delegation of powers on the Federal Council for the regulation of economic life. Be it noted that this act was to serve as a model for the legislative technique adopted by the Third Reich. By virtue of the all-encompassing jurisdiction contained in the statute, the ordinance-making power of the Reich Government—which in practice ran the Federal Council—superseded the legislative powers of the Reichstag under the pretext of totalitarian War Government. State governments as well as dynasties were swept aside by the centralized Government of the Reich, which, in turn, was controlled by the Supreme Command of the army. War centralization entailed the mushroom growth of offices in Berlin, which, with its countless Boards and Committees, at once became the administrative center of Germany, eclipsing the dynastic capitals. Equally eclipsed was the Kaiser, politely ignored by the generals in command and broken in spirit by the war and his mistakes leading into it.

The Crisis of 1917 and the Reichstag

Only the Reichstag, though practically stripped of legislative powers, was deemed indispensable by the Supreme Command for maintaining patriotic morale and national unity. Split by internal dissensions, once more the Reichstag failed to live up to the situation, which called for substituting political leadership for the arrogance of the generals. At last the unrestricted U-boat war, forced upon Bethmann-Hollweg by army and navy commanders (Tirpitz), the breakdown of Tsarist Russia, and the effect of the blockade together with the strategic stalemate in the West, induced an understanding between the Socialist, Center, and Liberal parties in opposition to the intransigent annexationist war aims of the Supreme Command. The famous Peace Resolution of July 19, 1917, sponsored by Herr Erzberger, a Centrist leader with close connections to the Holy See, was carried by a parliamentary

[1] *Gesetz über den Erlass kriegswirtschaftlicher Massnahmen* of August 4, 1914 (RGB. p. 327).

combination of the Center, the Progressives, and the Socialists, joining together the reformist parties into a majority bloc which was later to become the so-called Weimar coalition. But the Reichstag majority was incapable of imposing parliamentary participation in the political conduct of the war on the supreme Military Command and the Prussian reaction allied with it. The Reich Chancellor Bethmann-Hollweg was forced to resign through pressure from G.H.Q. as well as through the Reichstag majority, which considered him an obstacle to parliamentarization of the government. After the brief interlude of the Chancellorship of one Dr. Michaelis, a puppet protege of the Supreme Command, the idea of parliamentarization had become imperative enough to make the appointment of his successor, Count Hertling, a Catholic professor of philosophy and since 1912 Bavarian Prime Minister, dependent on the approval of the Reichstag majority.[1] Under the Chancellorship of von Hertling, the political disintegration of the Reich reached its climax. The Government again submitted unreservedly to the domineering arrogance of Ludendorff, and the results of triumphant militarism were demonstrated in the Peace Treaties of Brest-Litovsk (March 22, 1918) and Bucharest (May 7th, 1918).

The Constitutional Reform of October 1918

Constitutional reform of the Reich by way of introducing parliamentary government in its authentic form came too late and only after Ludendorff, under the smashing blows of the allied armies, had realized that the military gamble was lost and clamored hysterically for an immediate armistice. In September, 1918, the first parliamentary Government of the Reich was formed, under Prince Max of Baden as Reich Chancellor and members of the majority parties as Cabinet. Implored by Hindenburg, the new Cabinet on the night of October 3, 1918, sued President Wilson for an armistice. Parliamentarization of the Reich was legalized by two statutes embodying amendments to the Constitution.[2] Even the military super-government, protected by the Prerogative of the Crown, was hastily subjected to parliamentary control.

It should be noted, in the light of later distortions, that parliamentarization of the Reich and, at long last, constitutional

[1] Hertling's Cabinet contained for the first time parliamentarians; namely, a Progressive (v. Payer) as Vice-Chancellor and a National Liberal (Friedberg) as Prime Minister of Prussia.

[2] Laws of October 28, 1918 (RGB. pp. 1273, 1274).

responsibility of the military authorities, were ushered in while the Imperial Constitution was still in force. They came at the request, and with the consent, of the defeated military leaders themselves. The starving and utterly exhausted masses of the German people took little interest in this fundamental change. All they desired was peace and bread. On November 8 William II, the "Supreme War Lord," fled to Holland. On November 9, Germany was in the throes of the Revolution.

Causes for the Lost War and the Breakdown of the Empire

The causes of the loss of the war and the collapse of the constitutional structure of the Empire are interrelated. The war was lost, in spite of the heroic deeds of the German soldier on the battlefields and the German housewife at home, because Germany could not win over the resources of the world and the blockade of the British fleet. But all opportunities for a timely and honorable peace were lost because of the overbearance of the generals, who, incompetent even on their own field, had persistently lied to the people on the actual military situation and had promoted the annexationist ambitions of the misguided bourgeoisie. But, in the last analysis, the war and the opportunity for peace were lost because authoritarian government disguised as constitutional monarchy had no longer the support of the people, deprived of the legitimate expression of their will. It permitted a factual super-government by the military caste which had superimposed its will on a weak monarch and a constitutionally crippled civilian government. Defeated with the German people in 1918 was Bismarck's work.

Nationalist reaction, rapidly recovering from the shock of defeat and revolution, soon invented the most shameless lie, which was to become the principal weapon in Hitler's armory against the Republic—that Germany was not defeated on the battlefield but "stabbed in the back" by the Socialists and the other "November criminals." Today this legend is the official explanation of National Socialism for Germany's defeat in the World War.

PART III. THE WEIMAR REPUBLIC, 1919-1933

CHAPTER VII. REVOLUTION AND CONSTITUTION

The Revolution of November 1918

If a revolution implies, by definition, overthrow through force and violence of the existing political system, the events called the German "Revolution of 1918" do decidedly not deserve the name. What actually happened was that the ruling class vanished and that its visible exponents, the monarchies, both of the Empire and of the states, abdicated without even the application of violent pressure. The change in government struck the old powers with as much surprise as it did the masses of the bourgeoisie and of labor. Only to a very small extent was the Revolution due to the undermining activities of revolutionary parties or individual agitators. After the military breakdown, the starving and mentally exhausted masses were no longer disposed to accept the traditional authority of the ruling class, whose blindness and ineptitude had caused the downfall of the Empire.

The Revolution of 1918 lasted for exactly one day. On November 8, the Kaiser had fled to Holland, deserting the army and thus forfeiting any future claim to the throne. Without this irresponsible act the monarchy could probably have been saved, as many of the Liberal leaders had desired. On November 9, 1918, the acting Reich Chancellor, Prince Max of Baden, offered to the Socialist leader, Friedrich Ebert, the office of Reich Chancellor, and it was accepted. Since the formation of a workable Government was possible only with the collaboration of the radical wing of the Socialist Party, the Independent Socialists [1]

[1] The Independent Socialist Party had grown rapidly from a few dissenters, who had refused to grant war credits to the Government in 1914, to an independent radical group within the Socialist movement. It split from the Socialist Party during 1916 and constituted itself as a separate group in April, 1917. In terms of parliamentary seats it embraced about one-fifth of the party. Politically it was

(the latter, however, refusing to collaborate with members of the bourgeois parties), a cabinet of three members of the majority group of the Socialists (Majority Socialists) (Ebert, Scheidemann, and Landsberg) and three Independent Socialists (Haase, Dittmann, and Barth) was formed, which called itself at first "Council of the People Commissioners," more frequently Reich Government. Ebert's successful efforts to let the Independents share responsibility in the Government were in the main responsible for staving off definitely the Bolshevist danger from Germany.

From the start, the German "Revolution" steered a conservative course. The six Commissioners distributed among themselves the various departments of government, but the latter were actually headed by Socialist and bourgeois parliamentarians with administrative experience and could rely on the loyal co-operation of the civil service in the Reich and in the states. The officials, spared, to the belated regret of many then and later, any "purge," prevented administrative chaos and accepted the change in sovereignty without opposition. Ebert managed also to enlist the co-operation of the Supreme Command of the army—Field Marshal von Hindenburg remained in office while Ludendorff had fled to Sweden—and through his skill avoided civil war and assured an orderly demobilization.

The conservative trend of the German Revolution expressed itself further in the desire shared by government, parties, and the overwhelming mass of the nation to lay a firm foundation for the new order by calling a Constitutional Convention or National Assembly. In the meantime the Council exercised legislative and executive functions in the Reich; in the states Socialist and Liberal parties, after peaceful dethronement of the dynasties and dissolution of the state diets, assumed governmental powers. A revolutionary Council of Workers, Peasants, and Soldiers constituted itself in Berlin and tried in vain to commit the Reich Government to a more radical Socialist course.[1] Nor could the local Soldiers, Workers, and Peasants Councils, which sprang up everywhere, at any time seriously endanger continuation of the administration on customary lines. These councils, demonstrating, in their verbose inactivity, more than anything else the political

under the influence of Bolshevik tenets and entertained, under the leadership of Liebknecht and Rosa Luxembourg, a militant section which assumed the name of the Roman slave "Spartacus" as a rallying cry.

[1] On November 22, 1918, in an agreement between the Reich Cabinet and the "Central Council," the latter recognized the former as legitimate executive of the Reich.

immaturity of the Germans, devoted most of their time to fierce and futile debates and left the business of governing to the Governments, the task of administration to the trained bureaucracy. In this strange "Revolution" nothing was turned over.

Yet the task of the Reich Government was by no means an enviable one, and called for steadfastness and circumspection. Harassed by daily increasing difficulties of demobilizing millions of men, hemmed in by the economic consequences of the Armistice and the blockade continued against a helpless and disarmed people, it had to overcome separatist tendencies, especially in the West and in Bavaria. But the most difficult task of Ebert and his moderate associates in the Reich Cabinet was that of keeping at bay the growing militancy of the "Spartacus" movement, which aimed openly at the establishment of the dictatorship of the proletariat.

Spartacus, Free Corps, and Soviet Republic in Bavaria

But before the deck could be cleared for democratic elections, the militant minority of the Independent Socialists (constituted in late December of 1918 as the Communist Party), fascinated by the Russian precedent, forced a showdown with the Reich Government which bent all efforts towards the return to legality and normalcy. In January, 1919, Spartacus staged an open rebellion in Berlin and ruled the capital for a week. Ebert was placed in the most embarrassing position of having to choose between jeopardizing the peaceful evolution or putting down the revolt by armed force. Dependable troops were not available to the Government. Ebert resorted to a device which was to become of momentous importance for the future and, in fact, created the precedent for the militarization of the National Socialist movement. Supported by the army command under General Grœner, he formed corps of volunteers taken from the ranks of the old army, mostly officers, students, white-collar workers, and other members of the bourgeois intelligentsia; his Socialist lieutenant Gustav Noske, destined to become one of the most hated men of the Republic, put down the revolt in Berlin and in other isolated sections of the country. It may be argued that Ebert had possibly no other choice at that time if he wanted to save the democratic republic, but the fatal precedent was set for legalized and organized violence of the reactionary bourgeois classes against labor and for the new technique of "Free corps" as private military units competing with the regular military

power of the government. The radical leaders Rosa Luxembourg and Liebknecht were captured and brutally murdered by nationalist officers. A magistrate, Joerns, who was the investigating judge, broke his oath and let the murderers escape. The incident was followed by a series of the most scandalous political trials, in which the liberal journalist who had exposed the connivance, was sentenced, by the Supreme Court, to a prison term. Abuse of justice by reactionary courts under the Weimar Constitution did much to undermine confidence of the people in the democratic governments and helped to create, by granting immunity from punishment for "patriotic" acts, that atmosphere from which the National Socialist practice of lawlessness sprang.

Revolutionary unrest continued throughout Germany in the first months of 1919 (in Hamburg, Thuringia, Saxony, Brunswick, and the Ruhr), but was always ruthlessly suppressed by the regular army and the volunteer corps, which became the nucleus of militant reaction. The most publicized, though by no means the most dangerous, uprising occurred in Bavaria. The so-called Soviet republic (*Raete-Republik*) in and around Munich in March and April, 1919, was not devoid of carnivalistic features as befits the most easy-going city of Germany, but it grew into a major national catastrophe. After the breakdown of the rebellion, white terror of unprecedented brutality was unleashed against innocent and guilty as the prelude to the establishment, in Bavaria, of the first reactionary government, from which henceforward conservative counter-revolution as well as the Hitler movement radiated to all parts of the Reich. No other illustration of the "red menace" has served its propagandist purpose better than this futile experiment in Soviet technique on German soil.

In fairness, it should be stated that the efforts of Ebert and the moderate Socialists were instrumental in directing the radical tendencies of the deeply stirred masses into the channel of legality and orderly governmental processes, that he prevented Germany from sliding into Russianization which, in view of the bourgeois character of the German nation, could have led only to civil war. Ebert, like Lincoln, saved the unity of the nation. On the other hand, one cannot fail to overlook the tragic misfortune that circumstances, more than deliberate failures of the Socialist leaders, prevented even the partial fulfilment of the anti-capitalistic yearning of the German masses. This tells us why the Socialist ingredient in the Hitler movement was able to capitalize on

the delusions and dissillusionment of the masses during the Republic. Even one who refuses to blame Ebert and his associates as the "traitors" of the working-class movement cannot fail to deplore the initial shortcomings of the Republic in reconstructing boldly social life on more collectivistic lines.

The National Assembly and Its Work

On January 19, 1919, elections for the National Assembly were held. Citizens of both sexes of the age of twenty were entitled to vote on the basis of a still rather crude proportional representation; for every 150,000 voters one deputy was elected. In evaluating the election results, it is remarkable that, different from French elections after the downfall of the monarchy in 1870, an overwhelming majority of all votes was cast for the parties favoring the democratic Republic.[1] Monarchical restoration, in former times the persistent threat to republican government, had no more chances to the very end of the Weimar Republic. The bourgeois parties outnumbered, from the start, the Socialists of both denominations.[2] The moderate and constitutional Majority Socialists, polling 45% of the total vote— a figure never reached by any other party, the National Socialists in 1933 not excepted—, outnumbered the radical wing by five to one.[3] On the whole, the same parties which had composed the Reichstag of the Empire reappeared with partly changed personnel, after having dubbed themselves by democratic labels. Victorious in the election were the parties behind the Peace resolution of 1917—Socialists, Catholic Center and Left-wing Liberals (Progressives), now rechristened Democrats—among themselves they held 331 seats, or almost three-fourths of the assembly and became the broad parliamentary and popular basis of political reconstruction, henceforward known as the "Weimar coalition." These parties had to liquidate the heritage of the Empire, defeat and economic destruction, and were to bear the brunt of Nationalist attacks when they signed the Peace Treaty and drafted the Constitution. Those responsible for the catastrophe were able to remain in a tactically profitable opposition and to gather strength for the final liquidation of the Republic. For the years to come, nationalist propaganda identified the Weimar coalition with the

[1] The parties inclined to monarchical government, namely, the German Nationalist Party (formerly Conservatives) and the German People's Party (formerly the right-wing National Liberals) obtained only 63 from a total of 423 seats.

[2] Sixteen million votes as against fourteen million of the Socialist groups.

[3] 11,509,000 votes to 2,317,000, or 163 deputies to 22.

Peace Treaty of Versailles; and the burden of the Treaty weighed down on both the coalition parties and the Constitution it drafted and enacted.

In view of continued unrest in Berlin, the National Assembly was convened, on February 6, 1919, to Weimar, the town of glorious cultural past, as a symbolic antidote against Potsdam and the spirit of Prussian militarism. The National Assembly adopted first a preliminary working Constitution.[1] On February 11, 1919, Ebert was elected the first President of the Republic. Moreover, the act, anticipating the final Constitution, introduced formally the parliamentary system under which the Reich Government appointed by the Reich President is responsible to the parliament. This provisional solution was superseded by the final Constitution adopted on August 11, 1919.

The main function of the National Assembly, in addition to serving as a regular legislative body of the republic, was to draft and to adopt the new Constitution. Its most tragic task was to authorize the acceptance of and to ratify the Peace Treaty, whose severity shattered all illusions of the German nation that they would not be held responsible for the sins of the monarchy and the old ruling classes.[2] After the adoption of the Constitution, the National Assembly continued as regular Reichstag, and many of the principal pieces of economic and political reconstruction are to be credited to its legislative activity.

As a whole, the National Assembly need not fear comparison with some of the most eminent parliamentary assemblies in modern history. Containing a number of excellent administrators and public officials, distinguished professors and leading lawyers, its work was characterized by speed, efficiency, consciousness of the magnitude of the task, and realism, entirely different from the futile idealism of the *Paulskirsche,* to whose spiritual heritage Weimar succeeded.

As the "father of the Constitution" figures Hugo Preuss, a Liberal professor of constitutional law and, since November 15, 1918, Reich Minister of the Interior. American constitutional experience together with Swiss and French institutions were incorporated while, on the other hand, the learned author clearly realized that Germany, forever delivered to a multiple party sys-

[1] *Gesetz über die vorläufige Reichsgewalt* of February 10, 1919 (RGB. p. 169).
[2] The Peace Treaty was signed, on June 28, 1919, by two members of the government: Bell (Center) and Mueller (Socialist). On July 9, 1919, the Assembly ratified the Treaty by 239 to 116 votes.

tem, could not much utilize the two-party dynamics of British constitutional tradition.

The Weimar Constitution, upbraided and ridiculed by National Socialist propaganda, can claim a fair evaluation in other countries. By no means equaling the singular draftsmanship of the American Constitution, it remains nonetheless a remarkable document of constitutional jurisprudence. The first part, containing the frame of government, ranks high among modern constitutions as to concept, logic in drafting, and political realism. The second part, the Bill of Rights, on the other hand, was a rather unfortunate compromise of liberal and socialistic ideas and postulates; it lacked cohesion and revealed a good deal of the doctrinaire stubbornness of the German mind. The Weimar Constitution was a well-planned democratic house in which the Germans could have lived if they had wished, and if the neighbors had allowed them a peaceful integration into the world community. Seen as a whole, the Weimar Constitution was the perfect embodiment of the rule of law-state of our time, and has duly influenced most of the other democratic constitutions of postwar Europe which have ultimately shared its fate.

CHAPTER VIII. SYMBOLS AND TERRITORY OF THE REPUBLIC

German Government and Politics under the Weimar Constitution

In the following presentation of government and politics under the Weimar Constitution, we shall try to describe what the provisions of the Constitution meant to imply, and how the institutions operated in practice.

Name

"The German Reich is a Republic." (Art. 1.) [1] In establishing the republican form of government both for the Reich and the states (Art. 17) [2] the monarchical structure of government congenital in German history was officially banned from the German territories. The colors of the Reich were changed from black-white-red to black-red-gold (a rather yellowish gold at that) (Art. 3). This innovation, though historically justified, as black-red-gold had been the flag of the German unification movement in 1848, proved to be a grave psychological error of the fathers of the Constitution because it rubbed in the military defeat and ran counter to the sentimental memory of the past glory of Bismarck's Second Reich. The new colors were not even popular among the Republicans. Equally unsuccessful was the Republic in the continued controversy about the national holidays. Constitution Day (August 11) was never officially introduced by a Reich statute. From the beginning, the Republic failed in its efforts to emotionalize the values of the republican form of government by appropriate propaganda of symbolism, one of its fundamental shortcomings astutely exploited by Hitler.

[1] For a better understanding of the discussion in the text the reader is strongly recommended to compare references to articles quoted with the actual text of the articles in the Constitution itself. For a suitable translation of the text of the Constitution see the bibliographical note *infra*, p. 562.

[2] "Each *Land* must have a republican constitution" (*"freistaatliche Verfassung"*).

Territory of the Reich

The member state within the Reich was styled *Land.* After the cession of Alsace-Lorraine to France in the Peace Treaty, no territory under the jurisdiction of the Reich proper existed *(Reichsland).* The "right of self-determination," promised to Germany and badly mauled in Versailles, was given official recognition in the Constitution (Art. 18) for the benefit of the German *Laender,* which were "only casual products of dynastic history." Each *Land* was permitted to join any other *Land,* to dismember itself, or to arrange territorial regroupment or realignment of state boundaries; a rather complicated constitutional process was provided in which the will of the populations involved was to be ascertained through initiative and referendum, and the result accepted by way of a constitutional amendment statute of the Reich. In view of such possible territorial changes, the Constitution refrained from enumerating the *Laender* composing the Reich territory. The machinery of territorial regroupment was utilized, during the period, for eliminating a number of petty states in Central Germany, thus reducing the historical heritage of *Kleinstaaterei.*[1] Nonetheless the *Laender* were very unequal in size and population. At the end of the period, the territory of the Republic consisted of seventeen individual *Laender.*[2]

Austria

The Constitution considered Austria theoretically a part of the Reich after accession (*Anschluss*) (Art. 61 *alinea* 2). Under pressure of the Allied Powers, the Reich government, in September, 1919, consented to declare the provision inoperative, without, however, deleting it from the Constitution. When the Cabinet of Dr. Bruening, in 1931, made the ill-advised and untimely attempt to accomplish *Anschluss* by indirection through a customs union, the Allied Powers interfered again, and the plan was outlawed by the Permanent Court of International Justice at the Hague.

Territorial Reform (Reichsreform)

Efforts for a comprehensive change of the traditional dynastic state boundaries into a territorial re-groupment on regional-eco-

[1] Almost all Thuringian principalities organized themselves in 1919/20 into the new *Land* of Thuringia; Koburg joined Bavaria; Pyrmont (1922) and Waldeck (1928) were incorporated into Prussia.

[2] Prussia, Bavaria, Saxony, Wuerttemberg, Baden, Hesse, Thuringia, Hamburg, Mecklenburg-Schwerin, Oldenburg, Brunswick, Anhalt, Bremen, Lippe, Luebeck, Mecklenburg-Strelitz, Schaumburg-Lippe.

nomic lines continued during the period, particularly with the view of breaking up Prussia, which, in spite of constitutional curbs, still dominated the Reich by the sheer weight of her area and population. A Conference of the *Laender* in 1928 failed to come to a generally acceptable solution of this most knotty problem of German political structure. Even National Socialism, after seven years in power, was unable to devise a more rational territorial division of the Reich, although the process of simplifying the system of multiple states lines, inaugurated by the Republic, was continued on a limited scale.[1]

[1] See *infra*, p. 458 f.

CHAPTER IX. THE REICH AND THE LAENDER: THE FEDERAL STRUCTURE OF THE REICH

Federal Powers

Of the political institutions provided for by the Constitution, only the Federal Council (now called *Reichsrat*) remained as the recognized exponent of the federalistic structure of the Reich, consisting, like its predecessor, the *Bundesrat,* of delegates dependent on and instructed by the governments of the *Laender.* All other organs of the Republic [1] (Reichstag, Reich President, Reich Government) were national institutions and, as such, instruments of an increasingly intensified process of centralization. Likewise the compass of federal powers of the Reich was considerably extended. While the Bismarckian Constitution still followed the principle that all rights not explicitly conferred upon the Reich are vested in the states and transferable to the Reich only by way of constitutional amendment, the Weimar Constitution from the start endowed the Reich with such far-reaching federal powers that practically state rights existed only at the mercy of the Reich. The catalog of federal powers (Articles 6-13) was virtually all-comprehensive; State legislation not compatible with Reich legislation was automatically invalid (Art. 13: *Reichsrecht bricht Landesrecht).*[2] Federal jurisdiction was either exclusive of state legislation (Art. 6) or in concurrence with that of the *Laender* (Arts. 7-12), with the explicit understanding that federal legislation might be invoked at any time and for any

[1] In terms of American constitutional law the expression "Reich," when used in connection with political matters, corresponds to "Federal" in the United States.

[2] The question of whether or not federal legislation overrides state legislation may lead—and did lead—to controversies which were decided by way of arbitration between the Reich and the *Land* or *Laender* involved. The Supreme Court was designated as the tribunal. (Law of April 8, 1920 [RGB. p. 510]). In taxation matters the Supreme Financial Tribunal had jurisdiction. From 1920-1931 23 such cases were decided by the Supreme Courts. This is the federalistic application of judicial review which is indispensable in any composite state for straightening out differences between the federal government and the states in conformity with the rule of law.

subject enumerated in these articles that the Reich saw fit. In addition, the Reich, in case of need, could issue regulations on various enumerated matters binding the whole territory (Art. 12, called *Bedarfsgesetzgebung*). Since this power included public welfare in general and protection of public order and safety, even the police power of the *Laender* was subject to deep and frequent inroads of the federal Government. Finally the Reich could establish standards for state legislation, particularly in the fields of education, religion, population and settlement, and, most important of all, taxation (Arts. 10, 11, called *Grundsatzgesetzgebung*). Powers of the *Laender* were, on the whole, merely subsidiary to those exercised over all territories by the Reich.

In the actual catalog, the following powers assigned to the federal Government were explicitly enumerated (Art. 6): federal organization as such (constitution, national symbols, federal administration necessary for federal services, federal officials); protection of federal and state territory (including peace and war); foreign relations; army and navy; the right to maintain public order and safety within the Reich, amounting to enactment of extraordinary measures which were to become, in the form of emergency decrees,[1] of vital importance for the political life of the Republic; citizenship, freedom of movement within the Reich, immigration and emigration, extradition; customs and currency; postal services; requirements of as well as restrictions on trade, industry, and crafts; social insurance and social services. These federal powers do not seem considerably broader than under the Bismarckian Constitution; but the Reich could exercise optional jurisdiction on most of the other fields of state activities. Some of the most important were the transfer of state railroads—privately owned railroads had been the exception under the Empire[2]—and the establishment of a comprehensive federal financial administration.[3] These illustrations signify the general

[1] See *infra*, p. 367.

[2] Nationalization under Reich control was accomplished in 1920; thereafter the entire system of Reich railroads formed a self-supporting corporation of public law administered by the Reich, the largest industrial undertaking of the world.

[3] Immediately after the establishment of the Republic, a large-scale financial reform was undertaken, which, by assigning to the Reich its own sources of taxation (income, corporations, etc.) made it independent of contributions from the states. The latter, through an ingenious system of distribution and allocation of sources and types of taxes, were bound to tap mainly such taxes not claimed by the Reich (real estate, entertainment, liquor and licences or taxes on trade). Simultaneously, a Supreme Financial Court (*Reichsfinanzhof*) was set up to conform with the standards of due process in taxation matters. Financial centralization was one of the most effective devices for bringing and keeping the *Laender* in line with the policies of the Reich.

trend of Republican Germany toward thorough centralization, preparing the way for the final establishment of the unitary state under the National Socialist regime. The old struggle between state sovereignty and federal necessities of the Reich had become rationalized: the *Laender* governments clearly recognized the need for centralization of an economic and political system going through the common experience of defeat, demobilization, inflation, deflation, and economic depression; and offered their loyal co-operation. Prussian hegemony, now neutralized in the more equitable organization of the Federal Council, was no longer an obstacle. The Federal Council itself, stripped of most of its political influence, transformed itself into an efficient organ of Reich administration. Federal civil service, rid of Prussian control, attracted administrative talent from all over the Reich. The Republic must be credited with having built up an efficient and exemplary Reich bureaucracy of is own. Finally, the Reich Government now entered into business in a big way, bringing potash, coal, and various other staple industries and sources of raw materials under its immediate control. Unitarian tendencies were further accentuated by a uniform labor policy all over the Reich. In conformity with the homogeneity of economic interests the legal and judicial system followed a decidedly unitarian trend. To all practical intents and purposes, Germany under the Republic was on the road to a system closely approaching a unitary State.

The Position of the Laender

As mentioned above, not even territorial sovereignty was left to the *Laender,* since their state boundaries could be changed, by constitutional amendment, even against their will (Art. 18). No reserved rights of Prussia or Bavaria were recognized. Furthermore, the internal autonomy of the *Laender* was severely restricted by the provisions (Art. 17) that "every Land must have a Republican constitution," and that "the diet must be elected by all German men and women by way of general, equal, direct, and secret vote in conformity with the principles of proportional representation." This clause, corresponding to the "republican-form-of-government" clause of the American Constitution, enjoined both republican and democratic organization on the *Laender,* and provided for homogeneity in the political structure of Reich and states. Moreover, the article made the parliamentary pattern of government mandatory for the states, while leaving

the precise structure of the local diets, whether uni- or bi-cameral, to their own choice. This accounts for the wide variety of types of government and electoral systems existing in the various *Laender,* although the most common pattern was a unicameral organization of the diet, with full parliamentary sovereignty without the counterweight of an independent state president.

Seen as a whole, the Weimar Constitution amounted for the *Laender* to a momentous decline in political influence, power, and independence. Economic as well as cultural life became centered in Berlin; the capitals of the *Laender,* after the disappearance of the dynasties, became largely provincialized. Under local jurisdiction remained only matters directly dependent on local conditions, such as agriculture, religious and educational life, and the sphere connected with local and municipal administration. Deplorable as this result may seem from the viewpoint of cultural diversity in which Germany took pride in the past, it is in keeping with the universal development of centralization elsewhere. Without the spadework done by the Republic in overcoming particularism and regional jealousy, the final centralization of Germany under the Third Reich would have been well-nigh impossible.

Enforcement of Federal Supremacy (Reichsaufsicht and Reichsexekution)

The vast and comprehensive powers of the Reich in both legislation and administration were exercised in either of two ways: The Reich established its own administration, in which Reich officials dealt directly with the citizens, as in the case of the Reich taxation and the Reich railroads. More common, however, was a system by which the Reich utilized the existing administrative machinery of the *Laender* for performing Reich services and Reich duties. The Land authorities thus served as executive organs of the Reich. In the second case, the Reich was entitled to far-reaching powers of supervision of the Land authorities (Arts. 14 and 15)—incidentally already a feature of the Bismarckian Constitution—called *Reichsaufsicht.* In practice, the controlling and supervising powers of the Reich occasioned little friction and helped to promote uniformity and homogeneity in administration. If the Land failed to comply with a justified request of the Reich, or if the issue was controversial, the matter was referred to a decision of the Constitutional Tribunal (Art. 19, *alinea* 1). No other modern constitution excelled it in devices meant to make the rule of law a living reality, not only

between the citizens themselves and the citizens and the State, but also in the relations between the federal government and the *Laender* governments and authorities.

If, however, the *Land* stubbornly refused to comply with the decision of the Constitutional Tribunal, or if, in the opinion of the Reich government, the *Land* failed in the fulfilment of its constitutional duties of maintaining orderly processes of government, the Reich Government, after having exhausted all means of peaceful persuasion, could resort to the *ultima ratio* of applying coercion against the recalcitrant *Land* by the process of sanctions known as *Reichsexekution* (Art. 48). The enforcement procedure was left to the Reich President, under political responsibility of the Reich Government, and consisted of all means of indirect or direct pressure, such as financial sanctions, military measures, and even occupation of the *Land* by the armed forces of the Reich. While this procedure, already existing under the North German Confederation and the Bismarckian Reich, was never applied before, the Reich Government, under the Republic, felt compelled no less than four times to marshal the armed forces against a member state. The first three cases occurred in the stormy years of the early Republic (1920, 1923) when in Saxony and Thuringia radical governments, partly provoked by reactionary moves *(Kapp Putsch* of March, 1920, and Bavarian Rebellion of 1923), failed to maintain public order within their territories. Although the political wisdom of these acts may be open to doubt, the legitimacy of the procedure was scarcely challenged. The Supreme Court upheld the legality of the measures taken. Contrariwise, the last instance of an allegedly imperative enforcement of federal authority against a *Land* was decidedly *ultra vires* of the Reich Government. It occurred in July 1932, when the reactionary Cabinet of von Papen ousted, by threat of military coercion, the legal Government of Prussia, composed of Socialists, Democrats, and Centrists. This high-handed act of the Reich against state rights was an open *coup d'etat* from above, preluding fatally, as power politics versus legality, the period of lawlessness of the Third Reich.[1]

Arbitration between Reich and Laender

Relations between Reich and *Laender* were capped, in keeping with the principle of the rule of law, by the institution of the Constitutional Tribunal *(Staatsgerichtshof),* copied from the

[1] For details, see *infra,* p. 410 ff.

Bismarckian Constitution but developed into one of the most original and interesting aspects of the Weimar Constitution. Under a federal system of government occasional collisions between state and federal interests and rights are almost unavoidable. Such conflicts call urgently for equitable compromises through some judicial authority of recognized standing; otherwise settlement by power politics instead of by constitutional law would be attempted. Consequently, in place of the Federal Council, which, under the Imperial Constitution, had served this purpose, a genuine judicial and non-political tribunal was now established.[1]

The jurisdiction of the Constitutional Tribunal extended to the following matters: (a) Impeachment of the Reich President, Reich Chancellor, and Reich Ministers (Art. 59). The impeachment procedure was never invoked, and the provision remained a dead letter. (b) Arbitration of constitutional disputes or controversies arising within a Land, if no state tribunal for adjustment of such controversies existed.[2] (c) Arbitration of disputes or controversies "affected with public interest" when they arose between different *Laender*. This was the typical issue of federal arbitration serving for the peaceable adjustment of differences between the members of the federal organization. (d) Finally, arbitration of disputes or controversies arising between the federal Government and the member states (unless another Reich tribunal had jurisdiction). The only gap in this all-round system of arbitration was that no arbitration was provided for when organs of the Reich itself disagreed or were deadlocked against each other.

No other institution shows better the ardent desire of the fathers of the Constitution to exclude in justice and discrimination within the federal family of states and to solve all possible conflicts within the Reich by means of due process under the rule of law to which the sovereign states had to submit. But, at the same time, the institutionalization of due process as between sovereignties revealed inherent limitations, as power relations,

[1] Law of June 9, 1921 (RGB. p. 905); the court was technically connected with the Supreme Court, though factually wholly separated therefrom. Its composition reflected the strictly judicial character, the President of the Supreme Court (Chief Justice) acting as Chairman, with six associate justices—three from the ranks of the judges of the Supreme Court and one associate judge each from the Supreme Administrative Courts of Prussia, Bavaria, and Saxony.

[2] In this capacity the Constitutional Tribunal was rarely invoked, since most of the *Laender* established tribunals of their own for the adjustment of such local disputes.

once good will to compromise has been destroyed, are, in the last analysis, unjusticiable. Nonetheless, a very large number of disputes which otherwise might have developed into dangerous crises, or at least remained sources of distrust and resentment, were solved in a peaceable way. The beneficial influence of the institution of the Constitutional Tribunal on the integration of democracy can hardly be overestimated. The rulings of the Constitutional Tribunal, without exception, were accepted by all parties and scrupulously observed. Certainly it was not the lack of democratic institutions or procedures on which the Republic ultimately foundered.

The Federal Council (Reichsrat)

Under the Bismarckian Constitution, the Federal Council (*Bundesrat*), as the representation of the "allied governments" of the states, had been the pivotal organ of federalistic co-operation. Simultaneously, by its astute arrangement of voting strength, it had remained the capstone of Prussian hegemony. Under the Weimar Constitution, in keeping with the progressively unitarian structure of the Republic, the Federal Council was a rather hybrid institution, neither a genuine Senate as legislative representation of the *Laender* nor even an effectual clearing house for conflicting interests of the Reich and the member states. Surreptitiously it developed into a federal agency, active both in administration and legislation. Harmonization of state rights with Reich interests was left, on the whole, more to occasional conferences between the Prime Ministers of the *Laender* and the Reich Cabinet in Berlin or to extra-constitutional channels. As a federalistic brake on the Reich or shock absorber for *Laender* ambitions, as it was originally intended, the Federal Council was useless and superfluous, because the *Laender,* against all expectations, offered on the whole full co-operation with the Reich. In terms of political power, it lost out to the Reichstag and the Reich Government.

Within the Federal Council (Art. 61) each *Land* had at least one vote. In the larger *Laender* each unit of 700,000 inhabitants was entitled to an additional vote (a residue over 350,000 being equivalent to one full vote); thus substituting for the historical rank of the *Laender* the rather mechanical standard of equality based on population. No *Land* was to hold more than two-fifths of the total vote. This clause, directed openly against Prussia, served as a curb on Prussia's natural preponderance in size and

population within the Reich. Here the Republic had learned its lesson from the past. Re-allocation of the number of votes took place after each official population census. At the end of the Republic, the *Reichsrat* had 66 votes, of which Prussia could hold no more than 26.[1] Moreover, Prussia's influence within the Federal Council was weakened by the provision that one-half of the Prussian delegates were to be controlled, not by the Prussian Government, but by the government of the provinces into which Prussia's territory was subdivided.[2]

The members of the Federal Council were appointed by the governments of the *Laender*. As a rule, one delegate held and cast all votes of his *Land*. Thus the Council in action was a very small group of permanent officials who remained mostly in office even if the political color of the government they represented changed, because their expert knowledge of administration and personnel made their services almost indispensable. They acted on instructions of their governments, but as permanent members of a permanently assembled body, they were better suited to advise their governments at home than *vice versa*.

The professional homogeneity and *esprit de corps* of a political body destined to harmonize the conflicting wishes of the Reich and the states explains the evolution of an originally pluralistic organ into a full-fledged agency of the Reich. Meetings of the Federal Council, held in public, were presided over by a member of the Reich Cabinet (Art. 65), and all members of the latter were permitted or bound to appear before the assembly. The actual work was performed not in public plenary meetings but in 11 committees of nine members each, which deliberated *in camera*. A close co-operation between the Reich Government and the Federal Council was the result. Decisions were taken by majority, but since the Council most of the time was hand-in-glove with the Reich Government, the group of some

[1] Nine of the midget *Laender* below 700,000 inhabitants (Mecklenburg-Schwerin, Mecklenburg-Strelitz, Brunswick, Anhalt, Lippe, Schaumburg-Lippe, Oldenburg, Bremen, and Luebeck) had one vote each.. 9
Thuringia, Hesse, and Hamburg two votes each..... 6
Baden 3
Wuerttemberg 4
Saxony 7
Bavaria 11

Prussia received two-fifths of the total 40, that is, 26.

[2] Provincial votes were not infrequently exercised in contradiction to the policies of the Prussian Government, particularly in the later years when party differences between the various Prussian provinces became more acute.

20 or 30 administrative technicians could make most of the unofficial contacts.

In the first place, the Federal Council did invaluable work in preparing legislation sponsored by the Reich Government in the Reichstag. Collaboration was so smooth that the Federal Council became part of the legislative machinery of the Reich Government. Practically every bill, from whatever source it originated, was scrutinized and worked over by the Federal Council. In general, the latter had only a suspensive veto (*Einspruch*) against bills originating in the Reichstag which if overruled by a second decision of the Reichstag was subject to referendum (Art. 74). In the overwhelming majority of cases, disagreement between Reichstag and Federal Council was compromised between them through mutual concessions, while differences of opinion between Reich Government and Federal Council rarely occurred. In the field of administration the Federal Council developed into a regular administrative agency of the Reich of distinguished administrative efficiency. In particular, it collaborated in the enactment of federal administrative ordinances if they referred to matters left to the execution of the *Laender* on behalf of the Reich. In the last years of the Republic when emergency powers of the Reich President under Art. 48 superseded the action of the regular organs of legislation [1] the activities and with them the political importance of the Federal Council shrank considerably. In general, however, the accomplishments of the Federal Council were among the most auspicious portents for the ultimate success of the Weimar republic.

German Federalism in Operation 1919-1933

The much debated problem of whether or not the *Laender*, under the Weimar Constitution, were still sovereign states or already in process of transformation into territorial subdivisions of the Reich enjoying merely local autonomy, cannot be answered in terms of the constitutional provisions alone. The Republic came into being as the creation of the entire German nation, organized in nation-wide parties which transcended state lines. Even in theory, the statehood of the *Laender* was of the most precarious nature. The Reich, by constitutional amendment, could destroy the very existence of the *Laender* against their will. The federal Government could invade practically all jurisdictional areas of the *Laender*. Yet the *Laender* after 1918 were still states,

[1] See *infra*, p. 367.

though less so than the states of the American Union. It is here that the imponderables come into play which are reflected less by constitutional arrangements than by the feeling of the people. Though tribal sectionalism was decidedly in retrogression, the South German *Laender* especially—Bavaria most of all—considered themselves states; while Prussia, for the whole period under the influence of the most unitarian party, the Socialists, was much more inclined to subordinate her traditional statehood to the needs of national unity.

It seems almost miraculous that centrifugal tendencies emanating from the *Laender* never seriously endangered the cohesion or existence of the Republic. During the early years, it is true, conflicts occurred between the Reich Government and Bavaria, politically the most backward of the German states, controlled, without interruption, from 1919 to 1933 by the narrow particularism of the Catholic clergy. Bavaria became the happy hunting grounds for political reaction of nationalists, anti-socialists, and monarchists. In 1922 political assassinations of Republican leaders in which Bavarian officials had their hand, were climaxed in the murder of Walther Rathenau, Reich Minister of Foreign Affairs. Bavaria refused to apply to her territory protective legislation enacted by the Reich, the first act since 1871 of open defiance against the authority of the Reich. Even more serious was a rebellion of the Bavarian government against the Reich in the autumn of 1923, when, at the height of the inflation and coinciding with the collapse of the passive resistance against the Allies in the Ruhr basin, the nationalist reaction, openly protected by the Bavarian government of von Kahr, ripened into concrete plans for civil war against the Reich. At this juncture Adolf Hitler and the National Socialist party came for the first time into prominence. Hitler, with whom the Bavarian government was in secret understanding in plotting against the Reich, anticipated the outbreak of the official Bavarian Rebellion by his famous "Beerhall-putsch" of November 9, 1923. It was easily crushed under the volleys of the loyal Bavarian police.[1] The rioters killed by the police are the "blood martyrs" of the Third Reich today. Ebert's and Stresemann's moderation compromised matters with Bavaria, who confined herself henceforward to demanding a peaceful revision of the Constitution on more federalistic lines. Strangely reversing its stand, it was the Bavarian Catholic Party which led, at the end of the Republic, resistance against the impending Nazification of the

[1] See *infra*, p. 406.

Reich and even considered seriously secession from the Reich when it was threatened by a Nazi Government.

The conflicts with Bavaria revealed a danger zone embedded in the Constitution which was to become one of the contributing causes of the ultimate disintegration of Republican Germany. The German Republic not only tried its hand in federalism, but coupled it with the most difficult form of government, namely parliamentarism under multiple party dynamics. The parliamentary system in the Reich was duplicated by parliamentary systems on the local level in each of the *Laender*. Yet party fluctuations and political configurations did not operate in synchronization; frequently they ran counter to each other. National Socialism gained control in some of the *Laender* after 1931 (Thuringia, Oldenburg, Mecklenburg) and used the welcome foothold in power as a political ramrod against the Reich. Likewise, a conflict between the reactionary Nationalist Government of the Reich under the Cabinet of von Papen (1932) and the moderate Weimar coalition of Socialists, Democrats, and Centrists controlling Prussia (lasting without interruption from 1918 to 1932) could not fail to clash. A political order devised under the assumption of good will and compromise between the Reich and the *Laender* was bound to collapse once either the *Land* government or the Reich Government resolved to abandon co-operation. Seen retrospectively, the parallel institutionalization of parliamentarism in both the Reich and the different states became one of the causes of the ultimate breakdown of German democracy when state rights or federal powers were used as vehicles for party interests. Hitler, after the seizure of power, drew only the logical conclusions from his own successful experience in wrecking the Reich by exploiting political autonomy of the *Laender*, when he abolished, in 1934, the *Laender* as political units altogether.[1]

[1] See *infra*, p. 454.

CHAPTER X. POPULAR SOVEREIGNTY: GERMANY AS A DEMOCRACY

From time immemorial Germany had lived under the monarchical form of government. Suddenly in 1918, the dynasties disappeared and the people, without preparation or education, were left to their own devices. Simultaneously with the declaration that Germany had become a Republic, the Constitution stated the principle of popular sovereignty (Art. 1, *alinea* 2): "State authority emanates from the people." In conformity with the principle of democracy, all institutions of the Reich were based either directly or indirectly on the people. As a direct expression of the national popular will, the following institutions were organized: (a) The People themselves *(Reichsvolk),* participating in legislation by initiative and referendum. (b) The Reichstag, the national parliament, elected by universal suffrage. (c) The Reich President, also elected by universal suffrage. On the appointment and tenure of office of the Reich Government the people had only indirect influence through the arrangement of the Constitution that the popularly elected Reich President appoint the Reich Chancellor (and the Reich Ministers) (Art. 53) and that the Reich Government's tenure of office be dependent on the confidence of the popularly elected Reichstag (Art. 54). On this crucial contradiction of the Constitution, leading into the insoluble deadlock of a Cabinet supported by the Reich President ("presidential cabinet") but rejected by the Reichstag majority (parliamentary government), the Weimar Republic ultimately foundered. Popular sovereignty implied identity of State and nation. The people were simultaneously subject and object of the government, master and servant of the state. Aside from the defect mentioned before, the all-round democratic system of the Weimar Republic seemed logical and well balanced, perhaps even more so than the American system, which withholds from the President the power of dissolving Congress.

The People as Organ of the State

In the capacity of an organ of the State, the people were organized as electorate or body of voters; universal suffrage had existed since 1871, and its operation offered no difficulties. As a State organ, the people were called upon to act in the following ways: (1) As voters either in the regular election of the legislative body, the Reichstag, held every four years (Arts. 22, 23), or in extraordinary elections held after a dissolution of the Reichstag decreed by the Reich President (Art. 25); (2) As electors in the election of the Reich President; elections took place every seven years (Arts. 41, 43); (3) As voters in the recall of the Reich President before the normal expiration of his term (Art. 43, *alinea* 2); this procedure could be set in motion, however, only if it had been decided on by a two-thirds majority of the Reichstag; [1] (4) as legislators in the process of direct legislation by the people (Arts. 73-76).

During the lifetime of the Republic the people acted as electorate for the regular election of the legislative body only once, when they elected the Constitutional Assembly (1919). All the seven other parliaments (1920; 1924, May and December; 1928; 1930; 1932, July and November) were dissolved. Twice the people acted as agency for the election of the Reich President (von Hindenburg, 1925 and re-elected 1932).

Direct Legislation by the People

Direct participation of the people in the legislative process by initiative and referendum, following the Swiss precedent, was considered as an ultra-democratic device, counterbalancing, if necessary, more conservative or tardy action of the representatives. The provisions of the Constitution offered two possibilities: (1) The people could act, by way of referendum, as final arbiter between conflicting policies of Reichstag, Federal Council, and Reich President.[2] Factually the election of a new parliament after dissolution amounted to the same plebiscitary effect of allowing the electorate to express its opinion by way of the choice of parties. (2) Legislative proposals proper could originate from the people through initiative *(Volksbegehren)*. The legislative process was set in motion if one-tenth of the voters requested

[1] The idea of recalling the Reich President was never seriously entertained, although many people felt that President von Hindenburg had violated his oath of office by supporting "presidential" instead of "parliamentary" cabinets. See *infra*, p. 384 ff.

[2] For details of this complicated process compare Articles 73 to 76.

the introduction of a bill in the Reichstag. This percentage seemed sound because any one of the major parties could easily launch it, while it was difficult for local parties or political cranks to start the ball rolling. If the proposal initiated by the group was accepted by the Reichstag without alteration, it became automatically law. If the Reichstag refused to endorse it, the final decision on the proposal depended on the outcome of a popular referendum. Although this may seem a fairly easy access of the people to legislation, in practice the people were handicapped by two additional provisions: The Reichstag could be overruled only if the majority of voters participated in the referendum (Art. 75). Moreover, if the initiated bill contained a constitutional amendment, the majority of voters had not only to participate in the poll, but also to vote in favor of the bill (Art. 76, *alinea* 1, sentence 2). The result of these additional precautions against the misuse of the device by minorities was that a large party, disfavoring the proposal, could torpedo it simply by nonparticipation.

All these provisions made direct legislation so complicated and difficult that the legislative monopoly of the Reichstag was not in the least affected by it. On the whole, the people were no more enlightened than their representatives. To all practical intents and purposes, the Weimar Republic was a parliamentary and not a plebiscitary democracy. From 1919 to 1933 popular initiative was invoked for not more than eight proposals. Only three reached the first stage of popular registration endorsing the initiative; and only two among them, having found sufficient support of the voters, were submitted to popular referendum. None reached the statute book.[1] By the end of the Republic, the institution, misused by the radical parties of the Left and Right for demagogical purposes, was thoroughly discredited. The experiences of the *Laender,* where initiative and referendum were in much wider use (for the recall of the parliament, etc.), were equally discouraging.

[1] Several initiatives were not admitted because they were justly considered as financial measures on which only the Reich President could invoke the referendum procedure (Art. 73, *alinea* 4). Of the three successful initiatives, one (1926) dealt with the expropriation of the formerly ruling dynasties which, supported by legalistic courts, had blackmailed the treasuries of the *Laender* into highly onerous settlements for the latter. The initiative failed in the referendum stage. The second (1928), launched by the Communists against the building of a new "pocket" battleship, failed to obtain the requisite number of voters for the initiative. The third initiative (1929), sponsored by the Nationalists as a protest against the Young Plan settlement of the reparations just got through the initiative, but failed catastrophically in the referendum.

CHAPTER XI. THE REICH PRESIDENT

German political tradition, accustomed to monarchy, demanded a strong executive. The American pattern of the popularly elected President who was removed from parliamentary control offered itself conveniently. It was hoped that he would have enough prestige derived from the plebiscitary character of his election to become the stabilizing element in the fluctuations of parliamentary dynamics. On the other hand, remembering past experiences with the personal regime under the Second Reich, his position was integrated in the parliamentary government by prescribing, in unequivocal terms, that all his acts, including those referring to military matters, were valid only if countersigned by the Reich Chancellor or a Reich Minister (Art. 50). By his countersignature, the Reich Chancellor assumed responsibility before the Reichstag for every act of the Reich President. This arrangement was a curious blend between the powerful American President and the constitutional monarch of the German past.

Eligible to the presidential office was every German citizen who had completed his thirty-fifth year.[1] The term of office, like that of the French President, was seven years. Re-election was possible, as was recall before expiration of the term, decided by the electorate after the request of two-thirds of the Reichstag. A candidate was duly elected if he polled more than half the votes cast. If no candidate obtained the absolute majority of votes in the first election, a second election was to be held, in which the simple plurality won. The number of candidates for the second election was unlimited, and even new candidates could offer themselves.

During the Weimar Republic, Germany had two presidents. Fritz Ebert, Socialist leader of the Reich Government after the

[1] Hitler, before running for the Presidency against Hindenburg in 1932, suddenly was made, by political henchmen, citizen of Brunswick and thereby Reich citizen through a fraudulent appointment to a public office which he never held.

Revolution, was the obvious choice of the National Assembly in February, 1919. After his untimely death (February 28, 1925), the first popular election took place (March 29/April 26, 1925), in which, after an inconclusive first election, the old Field Marshal von Hindenburg consented to run in the second election and obtained a majority. In 1932 Hindenburg was re-elected, again only in the second election (March 13/April 10, 1932), Hitler running second by a wide margin.

Functions and Powers

The functions and powers of the Reich President in practice differed widely from the blueprint in the Constitution. In view of the device of countersignature by the Reich Chancellor, it should not be forgotten that whatever he did was done under the responsibility of the Reich Cabinet. The vast majority of political acts nominally labeled as presidential were in fact instrumentalities for the execution of the policies of the Reich Government. Ebert, with a lifelong experience in politics and trade union administration, one of the leading parliamentarians of the old Reichstag, accepted advice but let nobody decide for him. While he was in the Presidency, the highest office of the Republic was exercised as intended by the Constitution. When the old Field Marshal was dragged into the office things changed. Nobody expected that complicated legal and economic measures, frequently covering many pages in the Official Bulletin of Statutes, would be understood or even read by an aged general. He had to rely, if not on the Reich Chancellor, on the Secretary of the Presidential Office, Dr. Meissner, who has served faithfully—as faith goes—three masters, Ebert, Hindenburg, and Hitler. But he relied even more on his son, Oskar, who "had not been provided for in the Constitution," and the irresponsible advisors of the monarchist Junker clique, whose influence on him was as fatal as that of the court clique on the Kaiser. During his second term he was little more than a living corpse.

The principal functions of the Reich President embraced "international representation of the Reich" (Art. 45); but all material decisions had to be left to the Reich government. The crucial defect of the Bismarckian Constitution was remedied in that military matters, dealt with by the Reich President formally as Commander-in-Chief of the armed forces (Art. 47) were equally brought under responsibility of the Reich Chancellor, i.e., un-

der parliamentary control.[1] The military leaders (most of all Seeckt) and their Cabinet representatives succeeded in keeping the army out of politics and forging them into a neutral instrument of Reich power. But it goes without saying that Hindenburg's prestige with the army generals was greater than that of the Socialist Ebert, although the army loyally served both of them and the Reich.

Dissolution of the Reichstag

Another important function assigned to the Reich President was that of dissolving the Reichstag (Art. 25). One has to distinguish two different types of dissolution. Under the normal rules of the parliamentary system, the Government in power might dissolve parliament in order to invoke a verdict of the electorate on its policies. If the Government fails to obtain a working majority in the ensuing elections, it resigns. The second type of dissolution, characteristic for the German version of parliamentarism, consisted in this: if the Reich President, differing from the Reich Chancellor, believed that the Reichstag, in which the Government still commanded a majority, no longer represented the will of the majority of the people, by virtue of his independent position in political life, he could compel the resignation of the Government and decree the dissolution of the Reichstag. This use, or rather abuse, of the dissolution power implied in practice that the Reich President, at his discretion, could dismiss the Reich Chancellor whom he disliked, and appoint, in his place, some one in whom he had confidence and to whom he granted dissolution although his predecessor in office had been supported by a parliamentary majority. Hindenburg was induced by irresponsible advisers to use the dissolution power in 1932 in order to secure parliamentary majorities for his presidential Cabinets (von Papen and von Schleicher). This abuse of the dissolution power smashed the parliamentary system of the Republic and paved the way to power for Hitler.

Appointment and Dismissal of the Reich Chancellor

According to the Constitution, "the Reich Chancellor and, at his suggestion, the Reich Ministers are appointed and dismissed by the Reich President" (Art. 53). The assumption behind

[1] From the beginning, exercise of military powers was delegated to the Defense Minister (*Wehrminister*), who was factually the subordinate of the Reich Chancellor and under the control of parliament.

this rule, copied from the position of the constitutional monarch, was that the Reich President would appoint only a Reich Chancellor and a Cabinet who were assured beforehand of the confidence of the Reichstag or at least had convinced themselves that they would obtain it when installed in office by the President (Art. 54). At an early date in the life of the Republic, however, the Weimar coalition of the Reichstag, composed of Socialists, Centrists, and Democrats, who had enacted the Constitution, was broken. Thereafter no party ever obtained a clear majority. Consequently, the majority supporting the Reich Cabinet by its "confidence" had to be artificially joined together in difficult and prolonged negotiations between the parties. In taking a hand in bringing about a workable Cabinet supported by a workable majority of parties, both Ebert and Hindenburg had an influence in the selection of the Reich Chancellor and the determination of future policies far beyond the expectations of the fathers of the Constitution. While Ebert and Hindenburg (during his first term) conformed to the rules of the parliamentary game, the latter, immediately after his re-election in 1932, claimed the right to dismiss a Reich Chancellor of whose policies he, or the clique of intriguers behind him, disapproved, although the Reich Chancellor had still the confidence of the majority of the Reichstag. In open violation of the Constitution, he went so far as to appoint Chancellors who never had the slightest chance of gaining the majority support of the Reichstag and at no time enjoyed its confidence. This calamitous perversion of the parliamentary system led, in 1932, to the practice of the so-called "fighting government" *(Kampfregierung)*. The "presidial" instead of a "parliamentary" Government was a Cabinet lacking parliamentary support, though backed by the confidence and prestige of the President. It is true that so flagrant a violation both of letter and spirit of the Constitution was occasioned by the difficulty, if not impossibility, of finding a working parliamentary majority for the Government. It is equally true that the fragmentation of party life and the wrecking tactics of National Socialists and Communists alike were responsible for the parliamentary deadlock. But the solution found in the practice of presidential Cabinets was clearly unconstitutional and could be exercised only by equally illegitimate use or misuse of the emergency powers of the President for carrying on the Government. Once the President had been pushed into the legal no-man's land, it is easy to see that the period of political disintegration of the Reich

had begun from which Hitler, in January, 1933, emerged as the "savior of the country."

Emergency Powers of the Reich President under Article 48

The ominous Article 48 has become perhaps the best known provision of the Weimar Constitution outside of Germany as the symbol of dictatorship. It embodied what has been aptly called "constitutional dictatorship," though its actual application during the last years of the Republic was clearly unconstitutional. Again it should be emphasized that emergency powers nominally emanating from the Reich President were actually emergency powers accorded to the Reich Cabinet, which merely submitted its decrees to the Reich President for signature. Emergency powers for the strictly limited purpose of maintaining public order and safety were a familiar device both of the Imperial Constitution of 1871 and of the pattern of the constitutional monarchy in general. Under the emergency power the Reich Government, under the authority of the Reich President, could take any particular step deemed suitable for meeting the requirements of the emergency situation, or general measures serviceable for restoring normalcy. Moreover, the Constitution permitted deep inroads into the constitutionally guaranteed civil rights by authorizing the Government to suspend, while the emergency situation lasted, one or several of the seven fundamental guarantees of the rule of law, enumerated in Art. 48, *alinea* 2.[1]

After 1930 the emergency powers of the Reich President were stretched far beyond their original intention and scope and utilized, in the most irregular way, for carrying out, under cover of the Reich President's signature, governmental policies for which no parliamentary support was obtainable. The term of the Constitution: "serious disturbances or threats to public order and safety" was interpreted from the beginning in the much broader sense of coping with political situations in general which *might* ultimately involve dangers to internal peace. Under this extensive interpretation, not only police measures were enacted

[1] These suspendable rights were the following: inviolability of person (Art. 114), including freedom from arbitrary arrest and detention (*habeas corpus*); inviolability of private residence (Art. 115); privacy of mail and similar communications (Art. 117); freedom of speech (Art. 118), including prohibition of censorship; freedom of association and assembly (Arts. 123, 124); inviolability of private property (Art. 153), including protection against confiscation without adequate compensation. By granting suspension, for an indefinite time, of these fundamental rights destined to protect the citizens from arbitrary government, Hindenburg, in February, 1933, enabled Hitler to enslave the German people. See *infra*, p. 414. These Emergency Ordinances of the Reich President are still in force today.

by way of Article 48, but all measures intended to deal with economic or financial difficulties, labor problems, or revision of civil and criminal law, until the Emergency Decrees or Ordinances finally became a full-sized substitute for legislation when parliamentary support for governmental policies was unobtainable. From 1930 to 1933 emergency decrees of the President were almost exclusively used in the place of regular legislation by the Reichstag.

According to the Constitution, the use of the emergency powers under Article 48 was not without definite constitutional limitations. The strings attached to the power were that the measures taken should be temporary while the emergency situation lasted, and should not infringe on the Constitution itself. In practice, the Reich Government, after 1930, ignored these limitations, at least by indirection, in not a few instances. Furthermore, the Reichstag had to be informed without delay of all measures taken under the extraordinary powers and could demand at any time the repeal of such measures, even against the wish of the Reich Government and the Reich President. In practice, however, this provision remained a dead letter most of the time because the Reichstag, incapable of forming a working majority, was also unable, or unwilling, to revoke the emergency decrees. After 1930 the Reichstag majority, completely stripped of political power, "tolerated" government by emergency decrees of the Cabinet. Thus the Reichstag became an accessory to the crime of leading the Weimar Republic down the path of illegality. In fact, the Enabling Acts of 1933, 1937, and 1939, on which Hitler's dictatorship formally rests, are the logical and almost inescapable continuation of what Dr. Bruening had unwisely inaugurated under the Republic.

CHAPTER XII. THE REICHSTAG

Electoral System

Democratization was carried to the limit in the organization of the Reichstag. Theoretically, the electoral laws were flawless; practically, they failed calamitously to create the essentials of democratic and parliamentary government, namely, corporate consciousness of the parliament and opportunity for constructive leadership.

The suffrage was universal, equal, direct, and secret, under application of "the principles of proportional representation" (Art. 22). No complaints were ever heard before 1933 about the secrecy or honesty of the voting procedure. Not a single election in a single district was declared invalid because of dishonest or fraudulent practices. Voting was universal, since men and women of the age of 20 years were entitled to vote. Lowering of the voting age from 25, as under the Bismarckian Constitution, to 20 years was decidedly a psychological mistake in a country suddenly plunged into self-government. The masses of the younger voters, particularly after the depression had swelled the army of unemployed, naturally voted for the radical parties of the Left and the Right. Nor was the grant of vote to the fair sex an unmixed blessing, since women, against expectation, were more attracted by radical parties than men. Voting was also reasonably equal in that it gave all voters equal voting strength within the confines of proportional representation. That the vote was by no means direct will be seen from the following discussion of the technique devised for proportional representation.

Proportional Representation

Doctrinaires and idealists as the Germans were in 1918, they ventured into the uncharted sea of proportional representation, forging thereby unwittingly one of the major nails in the coffin of the Republic. For a successful operation of proportional repre-

sentation, two problems have to be solved: (a) How many seats should the individual parties obtain in accordance with their voting strength as compared with the voting strength of other parties? (b) How are the seats obtained by each party to be distributed among the candidates of each party? Proportional representation has become a crypto-science for mathematicians, statisticians, politicians, and psychologists. The common man, at least in Germany, never understood it and rarely cared. Various more or less complicated systems were *en vogue,* all based on the principle of dividing the number of votes cast by the number of seats to be distributed and of assigning to each individual party the number of seats corresponding to the divisor. This implied a number of additional operations and calculations in order to take care of the odd votes and to establish which of the competing party tickets, in relation to other tickets, was entitled to additional seats. The National Assembly, besides the various systems applied by the states, devised an ingenious method for the Reichstag by the so-called "automatic procedure." The number of deputies was not fixed in advance, but varied with the number of votes actually cast in each election. The higher the participation in the election, the higher the number of seats. For each 60,000 votes cast for a party ticket, the party received one seat. A residue of between 30,000 and 60,000 was equivalent to an additional seat. The visible result was that the number of deputies increased with each election, from 421 in 1919 to 647 in 1933; fluctuations faithfully reflect increase or decrease of electoral participation.

As to the problem of how to assign the seats obtained by each party to the candidates of the party, again a rather simple solution was found in that the sequence of candidates arranged before the election by party headquarters, decided the allocation of seats to the candidates (the principle of the "strictly non-variable ticket"). The voter had not the slightest influence on the composition of the ticket nor on the sequence of candidates; he had to swallow the ticket hook, line, and sinker. Primaries were unknown. Candidates were selected *in camera* by the party bosses. This allegedly most perfect democratic system was certainly the most soulless imaginable. The election was no longer a contest between personalities, but the automatic endorsement of a party ticket by the voter, at best a competition between lifeless party programs instead of a battle royal between living person-

alities. The individual voter in this democratically perfect system was only cannon fodder in the lusty warfare of party strategists. Proportional representation, at least under the German technique, disenfranchised the voter mentally and killed, together with his influence, his interest in party politics. Moreover, unimpeachable as the system may have been from the viewpoint of making the parliament a mathematical replica of the party configuration in the electorate, it sacrificed leadership, the living elixir of democracy, for accuracy. The turn-over of parliamentarians was surprisingly small; new men had the greatest difficulty in obtaining admission to the ticket controlled by the party bosses; the machines stood between the aspiring leader and the voter. No wonder that the National Socialists, deriding the system as "pluralism of political parties *(Parteienbundesstaat)*" could profit by the doubtful education of the masses under the Republic and establish an even more automatic, even more dictated, system of appointing the parliamentary personnel by virtue of the military discipline of the masses under the whip of the "Leader."

Organization of the Reichstag

With few exceptions, the organization of the Reichstag offers little which deviates from the Western pattern of parliamentarism. But some of the customary institutions were twisted in a particular way in order to serve the propagandist purposes of the enemies of democracy and to make co-operation between Government and parliament even more difficult than it was owing to the atomization of party life. Only a few points of organization were regulated by the Constitution itself. Arrangement of business was left to parliamentary autonomy by way of Standing Orders. The Speaker of the assembly was the Reichstag President, elected by the parliament. On the whole, the Standing Orders, devised for normal times, admitted of too much propagandist and wrecking tactics from the radical parties and condoned promotion of their party interests to such an extent that the parliament lost much of its prestige by leniency towards its sworn enemies, who utilized parliamentary processes only for destroying it. Likewise, Parliamentary Investigating Committees, a novelty in Germany, failed to promote co-operation between Reichstag and Government. Useful as was the work performed by the Committees in uncovering illegalities and abuses of nationalist circles patronized by authorities, the Government resented their activi-

ties and left nothing undone for hampering them.[1] The customary immunities accorded to Reichstag members [2] were equally misused by National Socialists and Communists for propagandistic, subversive, and even treasonable purposes. Liberal democracy, entangled in exaggerated legalism, failed to invoke in time adequate measures of self-defense.

Powers and Functions of the Reichstag

In the blueprint of the Constituent Assembly, the Reichstag was to be the center of political dynamics. In reality, however, the Reichstag fell short of the too-sanguine expectations. Its power declined from the beginning, and was finally wholly eclipsed by the Reich Government and the Reich President.

The functions and powers of the Reichstag may be summarized as follows: (1) It was the main legislative organ (Art. 69, *alinea* 2); the Federal Council was reduced to what amounted in practice to merely a suspensive veto.[3] (2) The Reichstag participated in the conduct of government by consenting to the declaration of war and the conclusion of peace (Art. 45, *alinea* 2), and to the conclusion of alliances and treaties. (3) It held the strings of the purse by passing on the budget and other financial transactions of the government (Arts. 85, 86). (4) It controlled the Reich Government by granting or withholding confidence (Art. 54), by interpellations and other means of checking up with governmental activities. (5) It held, at least theoretically, the whip-hand over Reich President and Cabinet by the power of impeachment and removal of the Reich President.

Reviewing the position of the Reichstag during the period, three stages have to be distinguished. During the first, ranging roughly from 1919 to 1923 (to the end of the occupation of the Ruhr and stabilization of the currency), the Reichstag had to cede much of its power to the Reich Government and the Reich President, who steered a difficult course through the aftermath of defeat and the catastrophe of economic collapse in the inflation. Then, from the end of 1923 to 1930, the Reichstag operated normally without interruption, and discharged efficiently

[1] It is significant that both Dr. Bruening and von Schleicher were felled by the clique around Hindenburg when a Special Investigating Committee of the Reichstag delved into the scandalous misuse of public money by the Junkers in the so-called Eastern Relief (*Osthilfe*).

[2] Arts. 36-38, granting, during the legislative period, freedom from arrest, immunity from judicial and disciplinary investigation on account of actions connected with the parliamentary mandate.

[3] See *supra*, p. 357.

all functions assigned to it by the Constitution. These years, roughly coinciding with Stresemann's control over the destinies of the Republic, are a striking proof of the potential ability of the German people to handle satisfactorily the complicated parliamentary system. The third period opens with Dr. Bruening in 1930, when the world depression began to press heavily on Germany. The Reichstag lost control and even influence on the conduct of politics by the Reich Government; and was finally superseded, in 1932, by "presidial" cabinets supported exclusively by the Reich President. The fall of the Reichstag must be attributed as much to the governmental policies of Dr. Bruening, who failed miserably in enlisting the co-operation of the Reichstag, as to the self-emasculation of that body, which, paralyzed by party dissensions, "tolerated" the supersession of parliamentary legislation by presidential emergency decrees. Militant democracy was needed, but Dr. Bruening was neither a democrat nor militant. No wonder that the Reichstag, by its own fault, was so much discredited as an institution that Hitler pushed it aside with scorn.

CHAPTER XIII. THE PARLIAMENTARY SYSTEM UNDER THE WEIMAR CONSTITUTION: I

POLITICAL PARTIES

Party dynamics in Republican Germany demonstrate again the tenacity of tradition. With the exception of National Socialists and Communists, the parties operating between 1918 and 1930 were the same as under the Imperial Constitution, without material modifications. Seemingly democratic labels were deceptive. On the whole the political parties were no better and no worse than in other countries; opportunistic, unprincipled, perhaps less boss-ridden, while also less willing to submit to leadership than is the habit in countries with a longer tradition of self-government. What resulted from political warfare and elections were, on the whole, only minor shifts and fluctuations in party strength. No landslide ever occurred or in fact could occur. This customary pattern was definitely broken when, at the elections of September, 1930, the National Socialists entered the parliamentary scene, a new mass party, operating under new emotional appeals and under the leadership of the greatest demagogue of our time. The party, revolutionary and reactionary at the same time, destroyed within two years the equilibrium of party life and finally seized government and State.[1]

(1) The Conservatives

The Conservatives, styling themselves "German National People's Party," stemmed from the Prussian Conservatives who, after the loss of the hereditary domain in Prussia, had spread all over the Reich as a nation-wide party. Never divorcing themselves from their authoritarian past, they were, from the outset, enemies of democracy as well as of the republican form of government. Monarchists without a pretender—the Hohenzollerns having forfeited their claim to the throne by deserting the army—

[1] See *infra*, p. 406 ff.

they became, through loud-mouthed patriotism, the center of reaction and opposition against Weimar. They drew their voting strength from the old ruling classes around the army and the civil service, with many adherents also from the higher and middle bourgeoisie and landowners, who feared for their vested rights by Socialist inroads. Any pressure of the victors in the World War on the down-trodden Republic was reflected in an increase in the voting figures for the Nationalists. At no time particularly strong in terms of votes and parliamentary seats,[1] they were influential far beyond their actual strength because no bourgeois government could afford to offend the Nationalists as the "patriotic" party *par excellence.* They were only two years in office, participating with important portfolios in coalition cabinets of non-socialist composition between 1925 and 1927. In 1930, when Dr. Hugenberg had forced his way to party leadership, the stubborn anti-socialist prepossessions of that reactionary capitalist led the Nationalists into vehement opposition to Dr. Bruening's bourgeois Government and into the arms of the rising National Socialist movement as allies. The "presidial" cabinets of Hindenburg were supported only by the Nationalists. Hugenberg helped Hitler into the saddle in 1933. It is safe to say that no other party in Germany has so wantonly wasted its considerable capital and has done more harm to the republican and democratic cause. Hugenberg, one of the grave-diggers of Weimar, and his friends received full compensation: Hitler threw them out of the government as soon as their usefulness was spent.

(2) The Conservative Liberals: The German People's Party

Next in order from right to left, came the conservative wing of the Liberals, as "German People's Party," the lawful heir to the National Liberals of the Empire; this is the party of Dr. Stresemann, the only statesman of European caliber of the German Republic. A class party without a mass basis, it had its stronghold in big business and industry of the higher; and in the propertied classes of the middle, bourgeoisie, and in the Protestant clergy. It recognized grudgingly the given situation of a republican instead of a monarchical government, but, despite liberal streaks, it never paid more than lip service to democracy. As anti-socialist as the Nationalist neighbor, the German People's

[1] Only in 1924 the Conservatives were the second strongest party of the Reichstag, with 103 deputies out of a total of 493. They fell as low as 37 in July 1932, and recovered to 52 in 1933.

Party was less intransigent in foreign policy, and granted collaboration with the republican parties from an early date. Its real strength, far superior to its actual votes, consisted in the economic power of its members, after Germany, shunning experimentation with socialism, embraced full-fledged capitalism with its attendant cartels and trusts in full control of economic life. The party participated in almost all cabinets between 1920 and 1931 (second cabinet of Dr. Bruening) in the form of the so-called "Great Coalition." But the almost incomparable complexity of German party politics may be illustrated by the fact that Dr. Stresemann, the leading figure in all German cabinets from 1923 to his most untimely death in 1930, was not always able to carry his own party with him in his efforts to bring Germany back to European co-operation.

(3) The Catholic Center Party

The most influential and at the same time the most stable party was the Catholic Party, appropriately called "the Center" *(Zentrum)*. As a primarily confessional organization, it cut through all layers of the population, embracing Westphalian and Silesian aristocrats as well as the bulk of the farmers in Southern Germany, the Rhineland, and the Catholic parts of Prussia, in addition to the small Catholic bourgeoisie and the Catholic trade unions. Social diversification made the Center an altogether equalitarian and genuinely democratic party. In view of its social structure, the Center could enter an alliance both with the Left, to which it inclined more, at least during the first decade, and with the Right; and thus it occupied the pivotal position. From 1918 to 1932 not a single coalition was formed without the Center, which held important positions in all cabinets of the Republic and provided the Reich with no less than four of the Reich Chancellors (Fehrenbach, Wirth, Marx, and Bruening). Owing to its unshakable entrenchment in the Catholic population, it maintained its strength throughout against the tide of radicalism, never falling below about one-fifth of the total strength of the Reichstag. National Socialism could never make a dent on it, which explains the hatred of the Third Reich for the party of the "black moles." It is true the Center pursued with consistency Catholic aims, stood for the sanctity of home and family life and for giving to the church its due in education and cultural activities. But at no time did the influence from the Holy See affect its genuine German patriotism. By its policies and

leadership, the Center Party has rendered invaluable services to the Republic.

(4) The Bavarian Catholic Party

The Bavarian section of the Center Party split from the main body in 1920 and organized itself as an independent unit (embracing about one-fourth of the total of the Center party). The Bavarian farmer, frightened by the experience with the Soviet experiment in 1919, disagreed with the alliance of the Reich party with the Socialists. In the years thereafter, Bavaria, dominated by the Catholic People's Party, became the center of reaction as the "cell of order." Serious frictions between Bavaria and the Reich ensued. In addition, the Bavarian Catholics were a professedly monarchist party, in favor of the restoration of the Wittelsbach on the throne of Bavaria. With progressing pacification of Germany after 1924, the Bavarian Catholic Party began to collaborate with the Reich party, and became again more or less an appendage of the Center. Under the threat of National Socialism, both sections sank their differences and presented a common front against the enemy of religion and tradition. But the Bavarian government was weaker than it boasted. No other country was subjected to such a relentless process of Nazification as Bavaria, for many hundred years the undisputed domain of the Catholic Church.

(5) The Liberals: The German Democratic Party

Post-War history all over Europe records the decay of liberal parties. Liberalism is least suited to the new technique of mass democracy. Germany is no exception to the rule. Moreover, German liberalism still suffered from the nineteenth century failures under Bismarck and the Empire. As a continuation of the former Progressives, the Democratic Party attracted at first the driftwood of the dissatisfied bourgeoisie, stunned by the defeat of 1918. It was the party of the liberal professions and of most people of the Left who refused to endorse the Socialist ticket. Patriotic without nationalism, liberal in economics without subscribing to the tenets of socialism and class struggle, the Democrats were the natural brokers between the Socialist laboring class and the bourgeoisie. Their position within the party dynamics resembled closely the English Liberal Party and the French Radical Socialists. But the history of the party is a record of decline; the middle classes soon found more congenial political quarters. In due

course the party became a group of brilliant officers without an army. A large number of the best brains of the nation were members of the Democratic Party. The party participated, with a few accidental interruptions, in all governments from 1918 to 1931 (second Cabinet of Dr. Bruening); its members held the most important positions as experts *(Fachminister)*. In later years it suffered most from the desertion of its members to "economic" parties. At the end of the period it was completely wiped out.

(6) Constitutional Socialism: The Social Democratic Party

In explaining the position of the Socialist Democratic Party *(Sozialdemokraten;* after the split with the Independent Socialists also called "Majority Socialists"), one has to be on guard against the stultification of the National Socialist propaganda, which, in assailing "Marxism" in general, no longer cares to distinguish between Socialists and Bolsheviks. When the Imperial regime collapsed under the defeat, the Socialists, as the strongest party since the elections of 1912, had to shoulder a responsibility which they had not sought. Their leaders, moderate and well-balanced men, rendered a lasting service to the German nation by leading a downtrodden people from the threatening revolutionary chaos into the legality of constitutional evolution. It is to the credit of the Socialists that they steered clear of wild experiments in large-scale socialization or planning, since the bourgeoisie would not have tolerated them. They had to fight on two fronts, against reaction on the Right and radicalism of the Communists on the Left. Together with the Democrats and the Center, they shaped the Weimar Constitution; but in an assembly in which they were outnumbered two to one by the bourgeois partners they had to forego fulfilment of Socialist wishes; the Constitution became a liberal-bourgeois compromise with a few Socialist ingredients. Thereafter access to political power was available only in conjunction with anti-socialist parties.

During the fourteen years of the Weimar Republic, the Socialists participated in the Government only for three and a half years. Socialist Reich Chancellors held office only twice (Scheidemann in 1918-19; Mueller, 1928 to 1930). After Dr. Bruening had formed his first cabinet (March 30, 1930) they never participated in the government. There is little in the National Socialist contention that the "Marxists" dominated the republic. On the other hand, the Socialists, together with the other parties of the Weimar coalition, held power in a considerable number of the

Laender, as in Prussia (cabinet of Braun from 1925 to 1933), Baden, Hesse, Hamburg, etc. The party paid lip service to official Marxism under the protective coloration of revisionism or evolutionary socialism, but, on the whole, the structure and policies of the Socialists were deeply permeated with bourgeois spirit, similar to the British Labor Party. As public officials, particularly as Provincial Governors and as County Commissioners in Prussia, but also in the civil service, they became as efficient as the old bureaucracy. But their leaders, with very few exceptions bureaucrats, as decent as they were mediocre, were unable to realize that in revolutionary times efficiency in trade union management is no pass-key to statesmanship. Bureaucratic structure and, consequently, lack of courageous leadership are the main entries on the debit side of the Socialist ledger. Tainted by the concept of "legality," they were unwilling to meet force with force; the Socialist *Reichsbanner,* a defense corps intended as a countermeasure against the militant private army of Hitler, was justly ridiculed by the National Socialists. Fratricidal conflict with the radical wing of Socialism also drained their strength. Every internal or external tension was reflected in an increase of Communist votes at the expense of the moderate and constitutional Socialists. Yet, in spite of all grave mistakes of the leaders and the defects of the party as a whole, the Socialists had established so firm a hold on the laboring classes that their voting strength and membership in the Reichstag rose steadily from the lowest point in 1924 to 1932. As late as in the elections of 1932 (July) they were overtaken by the National Socialists as the strongest party.

(7) Revolutionary Socialism: The Communists

Theoretically, revolutionary socialism under the Republic was closely patterned on Russian Bolshevism and the idea of the dictatorship of the proletariat. Practically, however, in spite of impressive figures at the elections, which soared after the beginning of unemployment and the world depression in 1930, the party had never the slightest chance of obtaining control of a country two-fifths of whose population were farmers and two-thirds anti-socialist bourgeois. The attitude of the party was consistently negative towards the Republic. In foreign politics more nationalistic than the Nationalists—therefore an easy prey to National Socialist conversion later—they gained strength by exploiting domestic misery caused by inflation and depression. But their tactics helped only the nationalist reaction to build

them up as the bogey for the bourgeois classes. The "red menace" scare contributed more than a fair share to the success of National Socialism, which cashed in on the anti-Communist prepossessions of the propertied classes. The increase of the National Socialist votes in the hectic elections after 1930 corresponds to a similar rise of the Communist vote. But it should be emphasized again that neither at the beginning of the Republic nor at its end did there exist a real danger of a Communist seizure of power. It is safe to state that unity in a Common Front of the two Socialist parties, which between themselves held consistently more than one-third of the total vote, would have prevented the collapse of the Republic and the advent of the Third Reich.

The normalcy of parliamentary life was rudely shattered and finally destroyed by the rise of the National Socialist "movement." Professedly anti-parliamentarian, which strangely enough became one of its strongest attractions for the masses of voters, the National Socialist Party was readily admitted to competition for political power through elections. It won the day by its novel and psychologically superior electioneering tactics. Once in power, Hitler smashed the Weimar Republic and with it the parliamentary system.[1]

[1] The discussion of the National Socialist Party will be reserved for later; see *infra*, p. 406 ff.

CHAPTER XIV. THE PARLIAMENTARY SYSTEM UNDER THE WEIMAR CONSTITUTION: II

THE REICH GOVERNMENT

The Reich Chancellor

The Bismarckian Constitution knew of no "cabinet" in the proper sense. The Reich Chancellor was the only recognized Minister, who issued binding instructions to the departmental heads as his subordinates. For the monocratic organization of the Reich Government the Weimar Republic substituted the "collegiate" or "conciliar" structure of the Reich Government *(Kollegialregierung).* "The Reich Government consists of the Reich Chancellor and the Reich Ministers" (Art. 52). Yet, in terms of the Constitution, the Reich Chancellor was more than *primus inter pares;* he was the Prime Minister or the President of the Council of Ministers, the real leader of his group of collaborators in the Cabinet.[1] The Reich Chancellor was to "determine the principal lines of politics for which he is responsible to the Reichstag" (Art. 56). As the leader of the Cabinet, he laid down, either generally or in specific cases, the governmental policies which the Ministers as departmental heads were to translate into practice within their individual departments. But, different from the Bismarckian concept, which was later copied by Hitler, command between superior and subordinates no longer prevailed. Resolutions of the Reich Cabinet were carried by majority decisions in which each Minister had one vote.[2] The Reich Chancel-

[1] Functions and conduct of business within the Reich cabinet were more specifically regulated in the "Standing Orders of the Reich Government" *(Gemeinsame Geschaeftsordnung der Reichsregierung)* of May 3, 1924 *(Reichsministerialblatt* 1924, p. 173), one of the most remarkable pieces of documentation for modern constitutional government. Equally important was the Reich Minister Act of March 30, 1930 (RGB., I, 96), which determined in a more precise legal way the position and functions of the Reich Ministers. The Act was in force under Hitler to 1937; its main provisions have been retained under the Third Reich.

[2] However, majority decisions could not overrule the Reich Chancellor when exercising his prerogative of laying down the principles of his policies, nor, in various specified instances, the veto of the Reich Minister of Finances.

lor was free in the selection of the Ministers as his collaborators. The Reich President was bound to appoint the men who were named by his Chancellor. Actually, however, the process of constituting the Cabinet was as much an object for bargaining between the partners of the party coalition to be formed as the designation of the Reich Chancellor himself. The claims of the parties, both as to numbers of ministries assigned to them and as to the specific portfolios they desired, had to be taken into account. On the whole, however, the number of *"ministrables"* was rather limited, and appointments actually made became more or less the obvious choice.[1]

The Ministers

Individual Ministers acted, within the limits of the general program decided on by the Reich Chancellor, independently for their departments under their own and personal responsibility towards the Reichstag (Art. 56, sentence 2). By the natural weight of their functions, the Minister of Foreign Affairs and the Minister of Finances, as everywhere, held the key positions in the Cabinet; while the increasing influence of the Defense Minister was a German peculiarity. In the reality of political life the organization of the Reich Government implied that the Reich Chancellor was the leader who directed politics in general, but his collaborators were independent and acted on their own responsibility in carrying out the administration in accordance with the general program. The number of ministries, varying according to needs, ran up, in the later years, to ten.[2] As a rule only members of the Reichstag served as Ministers, but it happened not infrequently that outsiders were called as "expert Ministers" *(Fachminister)*.[3] The division of work was sound enough to be taken over almost without modification by Hitler.

Appointment of Reich Chancellor and Reich Ministers

While the provisions of the Constitution dealing with the powers and organization of the Reich government were elaborate

[1] This situation was completely reversed in 1932, when the head of the first anti-parliamentarian cabinet, von Papen, filled the posts of his so-called "Cabinet of Barons" with his henchmen of the Junker class.

[2] Interior, Foreign Affairs, Finances (Treasury), Economics, Justice, Defense, Communications, Postal services, Agriculture and nutrition, Labor. The Office of Vice-Chancellor, appearing before 1925, was never of importance. Ministers without portfolio occurred occasionally.

[3] Of the Reich Chancellors, only Cuno, called by Ebert in 1923, and later the heads of the "presidial" cabinets, von Papen and von Schleicher, were not members of the Reichstag.

and, on the whole, reasonable, the rather laconic statement (Art. 53): "The Reich Chancellor and, at his suggestion, the Reich Ministers are appointed and dismissed by the Reich President" holds the crucial misconstruction of the Weimar arrangement, because it is immediately followed by the equally succinct statement (Art. 54): "The Reich Chancellor and the Reich Ministers need for the conduct of office the confidence of the Reichstag. Any one of them must resign should the Reichstag, by explicit resolution, withdraw its confidence." Since exercise of the appointive power of the Reich President was to be more than a mechanical formality, the two requirements of simultaneous confidence of the Reich President and of the Reichstag could produce satisfactory results only if the Reich President and the majority of the Reichstag agreed between themselves and continued to agree on the persons entrusted with the Government. In case of disagreement, an insoluble deadlock occurred, which, when it ultimately happened in fact, destroyed the Constitution, Republic, and democracy.

The explanation lies in the peculiar dynamics of German party life. Multiplicity of parties, of which none could ever get a clear majority at the polls, resulted in the situation that governments could be formed only by an alliance or coalition of several parties. No such fortunate automatism between the "ins" and the "outs" existed as under the two-party system, which presents to the appointing Chief Executive the leader of the victorious party as Prime Minister. Nor would it have helped if the Reich President had called the leader of the strongest party, since the latter always would have needed the co-operation of other parties in a coalition. Thus the Reich President had considerable freedom of choice, as in France, in the selection of the man for the Chancellorship. His only restriction was the prerequisite of the Constitution that the Reich Chancellor could not govern unless he received and retained the confidence of the Reichstag.

Actual Practice Adopted for the Formation of the Reich Cabinet

How, in actual practice, were the two eventually irreconcilable prerequisites of presidential and parliamentary confidence towards the Reich Chancellor handled in the process of constituting the Reich government? Clearly the practice depended on the initiative and prestige of the Reich President and his interpretation of his constitutional duties on the one hand, and the

readiness of the parties and their leaders to collaborate and to compromise, on the other hand. In terms of the Constitution, the parties of the Reichstag had no title to participation in selecting the Chancellor and the Ministers. Practically, however, the parties did so, because only coalition cabinets, to which they had to grant, or from which they had to withhold confidence, were feasible. No uniform procedure was followed during the lifetime of the Republic. At times the coalition parties agreed between themselves on a suitable parliamentary leader as Chancellor, extending such agreement even specifically to the persons of the Ministers and the assignment of Cabinet posts. The Reich President merely deferred to their suggestion. More often the Reich President took the initiative in finding a suitable man and, by negotiations, induced the partners of the coming coalition to accept his candidate. The actual composition of the Government coalition depended largely on the choice of the future Reich Chancellor. But with increasing bitterness of party life, which made compromise between the parties on the person of the Chancellor ever more difficult, it was natural that the influence of the Reich President in the selection of the Chancellor grew and outgrew that of the Reichstag. In later years, when the basis for parliamentary co-operation was narrowed and minority cabinets became the rule, actual influence shifted definitely from the parties to the Reich President. Once more Dr. Bruening, who had, by education and temperament, streaks of the disciplinarian and leaned more to authoritarian than to democratic government, is responsible for the change in the position of the Reich President by deliberately creating the popular impression that the Reich Chancellor is the subordinate of the Reich President and must rely more on the latter's confidence than upon parliamentary support, which at any time could be replaced by governing under the emergency decrees of Article 48. The Reich President, misleadingly labeled the "custodian of the Constitution" or the "symbol of the majesty of the State," reciprocated the loyal services of his Chancellor by dismissing him brutally in May, 1932. In the process of perverting parliamentary government into dictatorial government, the "presidial" or "authoritarian" cabinet is the connecting link.

The Illegal Practice of "Presidial" Cabinets

From these premises grew the lethal constitutional crisis of the Republic, whose seeds were the overlapping and conflicting

dualism of a simultaneous confidence of Reichstag and Reich President. Clearly the Reich President could not call into the Chancellorship a man who, he knew or could reasonably expect, in view of his previous contacts with the leading parties, did not and would not possess the confidence of the Reichstag. He might resort to the *ultima ratio* of calling a man to the Chancellorship who, by dissolving the Reichstag, could hope for a majority supporting him.[1] But, once the elections had failed to procure for him the needed confidence of a majority of the Reichstag, to continue him in office was a flagrant violation of the Constitution. And this is just what happened in 1932, when Hindenburg, accessible to the intrigues of the irresponsible clique of reactionaries and Junkers, dismissed Dr. Bruening, although he was undefeated in the parliament, and appointed von Papen as the head of a "presidial" instead of a "parliamentary" Cabinet—styled by a misnomer "Cabinet of the National Concentration." By an unconstitutional trick, Republican Germany slid back to the practices of the Second Reich, under which Chancellor and Cabinet were the exclusive choice of the Kaiser, irrespective of the wishes of the parties in the Reichstag. Deliberately the Junkers had put back the clock. Von Papen, as Reich Chancellor, was granted permission to dissolve the Reichstag. In the elections of July 31, 1932, the "Cabinet of the Barons" was flatly rejected by all parties, with the exception of a handful of Nationalists. Yet the Reich President, now openly violating his oath, retained him in power and even granted him a second dissolution, which again, in the elections of November 6, 1932, led to an almost unanimous rejection by the electorate and all parties. Only then did von Papen resign; and von Schleicher, again as head of a non-parliamentary, "presidial" Cabinet, succeeded him. The continued practice of "presidial" or "authoritarian" Cabinets, inaugurated under the prestige of the "Grand Old Man," who in fact was only the tool of the anti-democratic reaction, and supplemented by the self-abdication of the Reichstag since 1930, was prelude and precedent to the dictatorial Government of the National Socialists.

The Cabinet and the Parties

While the preceding discussion dealt mainly with the relations between the Reich Government and the President, it is necessary to explain the equally important position of the Reich Cabi-

[1] See *supra*, p. 365.

net towards the Reichstag. The Constitution itself was emphatic only in stating in unequivocal terms that the Reich Chancellor and the Reich Ministers need individually and collectively the confidence of the Reichstag for the conduct of the government (Art. 54). A Cabinet had to resign only when struck by a formal and explicit vote of non-confidence carried by a majority of the Reichstag.[1] If, however, the majority of the Reichstag refused to carry a vote of confidence, initiated by the Government supporters, the Cabinet, as a rule, remained in office because the Constitution prescribed resignation only in case of an outright vote of non-confidence. People conversant with parliamentary technique will fail to understand the subtle distinction between a carried vote of non-confidence and a rejected vote of confidence. Yet it helped in Germany to circumvent the rules of parliamentarism and to stabilize a Government once in office. At any rate, the practice was deemed justifiable because the Cabinets were anyway only coalition Governments precariously balanced for a time, or even only minority Cabinets, that is, Cabinets in which parties commanding only a minority of votes in the Reichstag had formed the Government coalition. This practice led in due course to an even more disingenious perversion of the parliamentary system in that minority cabinets, very frequent during the whole period, were "tolerated" by parties which felt disinclined to co-operate openly with the Government while they were equally disinclined to join the opposition and bring about the downfall of the Government.[2] Nor did the Cabinet feel compelled to resign if it was defeated on a particular measure or bill. It continued in office nonetheless. However, the device of the non-confidence vote played no important role in overthrowing cabinets. Cabinets fell because of internal dissensions among the coalition parties and ensuing disintegration, not because of frontal attacks by the opposition. The opposition itself was as hybrid an institution as the Government coalition. It was composed of the most divergent interests, united only in the hatred of the Government in power. Hence the opposition was not prepared to assume responsibility in case of withdrawal of the Government. Communists and National Socialists, forever unflinchingly in opposition to the governments in power, hated each other even

[1] This happened only three times.

[2] The second Cabinet of Dr. Bruening, lasting from October 1931 to May 1932, was "tolerated" by the largest party, the Socialists, in spite of its professedly anti-socialist policy.

more than the bourgeois Cabinets they fought in common and, as a matter of principle, would at no time have participated in a coalition. Their tactics were purely negative, aiming at discrediting and wrecking the parliamentary system as such.

From 1919 to 1933 all Republican governments were coalition cabinets. No party ever obtained a majority of votes and seats. Moreover, periods in which cabinets supported by a majority of the Reichstag were in control were interspersed with rather extended periods in which only minority cabinets could be formed. As to party combinations, three majority coalitions were alternately in power: (a) the "Weimar coalition" of the Socialists, Center, and Democrats (two years and ten months); this combination ended already in 1922, never to return; (b) the so-called "Great Coalition," an enlargement of the Weimar group to the Right by including the Conservative Liberals (German People's Party), altogether in office for two years; (c) a coalition including the Middle parties and the Right (Nationalists), excluding the Socialists, altogether in control for four years and eight months. These figures demonstrate that politically the Weimar Republic, after a Leftist start, shifted rapidly to the Right. During the longest part of the whole period the cabinets were tending to the Right. Minority cabinets rested mostly on the narrow basis of Center, Democrats, and German People's Party, at times supplemented by "non-political expert" Ministers. The "presidial" cabinets of von Papen and von Schleicher in 1932-33 were backed only by the decimated ranks of the Nationalists. Seen as a whole, however, the record of the Weimar Republic, considering continual external pressure, is not bad in terms of parliamentary support for the Cabinet in power. Without the extremist landslide in 1930, caused by the economic depression, the parliamentary system, and with it the Republic, could have become a success.

As to duration and longevity of cabinets, the Republic compares none too unfavorably with similar French experience in multiple party government. During the whole period of fourteen years, there were twenty cabinets under eleven Chancellors. A large number of Ministers continued in different cabinets, thus demonstrating a remarkable stability of the cabinet personnel; the *ministrables* consisted mostly of "seasoned" parliamentarians. With very few exceptions, the Ministers as well as the Chancellors were honest and competent men. It was much less "government

by amateurs" than later on was complained of. The record of the Weimar governments, down to 1932, is much better than their reputation in the light of National Socialist propagandists.

Parliamentarism and Leadership

That the Reichstag failed to fill the shoes measured by the Constitution is due to various causes. Whatever technical perfection a political system may boast—and the Weimar Constitution had manifest shortcomings,—it cannot produce the elixir of good government, namely leadership. If leadership means a vision and the courage to realize the vision in the face of obstacles, the Weimar Republic, with the notable exception of Dr. Stresemann, had not a single leader. Stresemann possessed the moral strength to divest himself of his exclusively capitalistic antecedents; he understood that a defeated nation has no choice between submission and defiance. "Policy of fulfilment" bore its fruits already in Locarno and Thoiry. The "silver lining on the horizon" was also the promising signal that better times were ahead for the young democracy. The years which saw him at the wheel (August 1923 to October 1929) were the happiest and most auspicious of the Republic, in spite of continued tribulation. The democratic idea began to sink its roots into the nation. Had Stresemann lived or found a successor of his caliber, the Republic would probably have been saved. But his successor was Dr. Bruening. The Republic slanted to the Right and into its doom. German political tradition, crippled under a hereditary and irresponsible monarchy, could not adapt itself to the creation of leadership. Moreover, party disunity prevented the rise of a corporate consciousness of the parliament. Neither the Reichstag nor the parties themselves were capable of developing a properly selective process for leadership. Imponderables are beyond the control of a constitution. Hence the German people, or at least a strong minority among them, were swayed off their feet when The Leader appeared who had both a vision and the will power to make it real. The victory of National Socialism should be appraised on the background of the failures of the Weimar Republic.

CHAPTER XV. CONSTITUTIONAL AMENDMENT

The Procedure of Constitutional Amendment

In modern states the procedure prescribed by the Constitution for its revision usually is the crucial test for the wisdom of the constitutional arrangements as a whole, whereas the actual application of the procedure is indicative of the political maturity and the social homogeneity of a nation. The Weimar Constitution could not approach the issue on the basis of previous political experience. Under the Bismarckian Constitution the process of constitutional amendment was more or less identical with that of regular legislation;[1] in practice constitutional amendments were passed like ordinary statutes. The Weimar Constitution likewise refrained from prescribing a special procedure by which the constituent power was divorced from the regular legislative agencies as is the case with the National Assembly in France and as is arranged in the United States through a combination of Congress and the legislatures of the individual states. In continuation of the Imperial tradition constitutional amendments under the Weimar Constitution were to be carried out as a rule by way of ordinary legislation and through the regular legislative agencies, that is, through concerted action of the Reichstag and the Federal Council. The only difference from the ordinary legislative process was that a constitutional amendment required, for its acceptance, qualified majorities in both Reichstag and Federal Council (Art. 76, sentences 1-3). In the Reichstag two-thirds of the total membership had to be present, that is, they had to participate in the vote, and of those present at least two-thirds had to vote in favor of the amendment. Thus actually four-ninths of the total membership were sufficient. In the Federal Council the general right to raise "objections" *("Einspruch")* against a resolution of the Reichstag (Art. 74) was stiffened in that two-thirds of the members of the Fed-

[1] See *supra*, p. 320.

eral Council had to cast a direct vote in favor of the constitutional amendment proposition.

In exceptional cases a constitutional amendment could be initiated also by the people, that is by one-tenth of the electorate; in this case the proposal, unless accepted in its proposed form by the Reichstag, was to be submitted to a referendum of the voters in which the majority of the registered voters had to participate and the majority of the voters participating had to agree with the proposal (Articles 73, *aliena* 3 and 76, sentence 4).

In practice, thus, a qualified minority of one-third of the members of both the Reichstag and the Federal Council could block the passage of any constitutional amendment. This was an ample protection against hasty and ill-considered changes of the fundamental charter by chance majorities in the legislative assemblies, while on the other hand a constitutional amendment originating from and sponsored by the people proved almost impossible; in fact, not a single popular initiative involving an alteration of the Constitution was able to reach the statute book. Though rather complicated and somewhat cumbrous, the process of constitutional amendment seemed, on the whole, neither too rigid nor too easy. Under normal conditions these arrangements might have proved satisfactory by allowing a qualified majority of the legislative assemblies or of the people to win their objective while avoiding the danger of having substantial minorities overruled by shifting majorities.

The Practice of Constitutional Amendment without Changing the Text of the Constitution

Another aspect of the Weimar Constitution deserves particular attention because here the German version of democratic government bears no resemblance to any other democratic country. Under all democratic constitutions a constitutional amendment implies what it signifies, namely an ostensible and outward alteration of the constitutional document proper; a new clause or article, or only a new phrase or new words are inserted into the text of the Constitution, or, as the case may be, words, sentences, paragraphs or whole clauses are deleted therefrom. Everywhere the essential fact is that the change produced by the constitutional amendment is made visible in the text of the Constitution.[1] Such "explicit" alterations of the constitutional text

[1] This statement is to be modified in the light of the practice in the United States because of the interpretation of the Constitution by the Supreme Court

occurred in Republican Germany not infrequently between 1919 and 1930. On the whole, they involved only such minor corrections in the original text of the Constitution as had become necessary; and none of them changed the fundamental arrangement of the functional structure.

For the bulk of constitutional changes, however, a less precise, a more surreptitious and therefore disingenuous method was resorted to, a technique inherited from the practice of the Imperial constitution which lacked a specific amendment procedure. When a clause of the Constitution stood in the way of a legislative proposal intended for a particular legal or political purpose, the Reichstag and the Federal Council, in collaboration with the Reich Government, passed, by way of the constitutional amendment procedure with the required majorities, an appropriate statute which materially deviated from the text of the constitutional charter, though without changing correspondingly also the text of the Constitution itself. This process was called a "statute amending the Constitution" *(Verfassungsaenderndes Reichsgesetz),* its only requirement being the endorsement by the increased majorities in passing the statute. Though strongly objected to by not a few of the responsible constitutional lawyers, this procedure of indirect or "silent" constitutional amendment was applied so frequently that it became almost a routine method incidental to legislation,[2] so much so that in the long run the guileless reader of the constitutional document was unable to realize how much or how little of the original text was still valid without reservation. Only the legal expert was aware when and where statutes had materially modified, restricted or expanded an article of the Constitution. Moreover, at no time did certainty exist, whether a proposed bill actually affected the Constitution and, consequently, had to be passed by the qualified majorities, nor could it be prevented that a proposed bill, though not affecting the Constitution, was erroneously subjected to the process of constitutional amendment with the result that, not having obtained the qualified majorities, it foundered in the legislative assemblies. Judicial review, though belatedly recognized as belonging to the courts of right, was never invoked in practice except within the limited jurisdiction of the Constitutional Tribunal. On the other hand, any statute, by using the amendment

which expands indirectly, by way of constitutional construction, the articles of the Constitution beyond their original implications.

[2] The exact number of such cases is not known, but the estimate of some sixty instances is conservative.

procedure, could immunize itself from the subsequent blame of unconstitutionality.

Thus the public grew weary of the recurrent controversies as to whether or not a statute had to pass through the process of constitutional amendment, as well as of the political haggling of the parties about it. Even more pernicious was that the people could not fail to notice how parliamentary parties and Government played ball with the sacrosanctity of the fundamental charter. If the parliamentary wirepullers could scrape together the required majorities the much-vaunted inviolability of the fundamental charter became an empty slogan. The practice of circumventing the Constitution by a rather facile procedure which deliberately avoided changes of the constitutional text, undermined the "constitutional consciousness" of the German people since the Constitution was what parliamentary chance majorities thought it was. This attitude has contributed, in the last analysis, more than its fair share to the acquiescence of the masses in the usurpation of the constituent powers by the "Fuehrer" and his irresponsible group of associates after the seizure of powers by National Socialism in 1933.

The Deadlock of Constitutional Amendment in Parliament

Since technically a constitutional amendment hinged around the need of rallying a combination of different political parties amounting to two-thirds of the Reichstag behind a proposal for a constitutional amendment, it must be obvious that party politics would vitally affect its ultimate success. Before 1930 it was difficult enough to obtain the qualified majorities for important issues, in view of the fragmentation of the parliamentary parties. When the elections of 1930 had increased the radical and extremist parties of National Socialists and Communists to one-third and more of the total membership of the parliament, the passage of a constitutional amendment became outright impossible. This fact goes to the very root of political dynamics in Republican Germany. During the latter years of Weimar the responsible sections of the people were almost unanimous in the realization that the framework of 1919 needed improvement in order to adjust it to the political exigencies of crisis government. But any constitutional reform, however desirable it might have been objectively, was frustrated by the requirement in the Reichstag of qualified majorities which, by virtue of the obstructionist tactics of the extremist parties, were unobtainable. In

particular, legislation intended to curb the excesses of the radical propaganda of the Right and of the Left could not be carried out because it involved a curtailment of the Bill of Rights. The radical parties against which such measures were directed, naturally refused to lend their support. Under these circumstances the constitutional set-up planned for normal times and in anticipation of a normal economic and political evolution because utterly rigid, obsolete, and wholly inadequate. Art. 76, constructed primarily and not without skill for the avoidance of deadlocks, was turned into the very gadget for deadlocking the entire constitutional machinery. It was by no means surprising that National Socialism, here as elsewhere benefiting from the errors of exaggerated legalism of the Weimar Constitution, transferred, by one bold stroke, full constituent powers to the "Fuehrer" and his cabinet,[1] thus completely leveling down the distinction between constitutional amendment and ordinary legislation. In another significant point the situation as it existed under the Bismarckian Constitution was restored by the Third Reich.

[1] See *infra*, p. 441.

CHAPTER XVI. THE BILL OF RIGHTS

General Character of the Bill of Rights

As most of the democratic constitutions of the liberal-bourgeois era the Weimar Constitution, next to the frame of government in Part I, contained an elaborate Bill of Rights, styled "Fundamental rights and fundamental duties of the Germans" in Part II (Articles 108-165). While the frame of government dealt with "structure and tasks of the Reich" the Bill of Rights was to draw a clear line of demarcation between state power and the sphere of the individual. The courts and constitutional jurisprudence, at first neglecting the Bill of Rights over the interpretation of governmental powers and functions, were rather tardy in vitalizing the juridical content of the second part of the constitutional charter. It was only after the Weimar Republic had passed its zenith that the importance of fundamental rights of the citizen and their protection by independent courts began to penetrate into the political consciousness of the average citizen. As it happens with liberty in general, the value of inviolate rights of the subject was more cherished when they were in abeyance than at the time when their enjoyment was not yet in jeopardy.

According to the tradition of liberal democracy, fundamental rights are the safeguards of individual liberty and of its lawful expression. It is true Anglo-Saxon and French precedents partook in the inclusion of a formal statement on fundamental rights in the Weimar charter, but the latter were certainly not an element alien to German civic heritage since both the Constitution of the *Paulskirche* of 1848 and even the Prussian Constitution of 1850 offered German patterns for such declarations of the rights of men. Moreover, a system of subjective rights of the citizens, protected from unlawful infringement by the administration, had been fully recognized and applied under the Imperial Constitution. Civil liberties of the generation living under the Empire

had been well enough shielded under the rule of law against arbitrary encroachments on the part of the administrative authorities.

The incorporation of the Bill of Rights in the Weimar Constitution, as it happened to be the case also with other matters of importance, was the result of a compromise between the conflicting political concepts of liberalism, collectivism, and clerical tradition, arrived at only after heated discussion. In its final form the Second part of the Constitution was a hybrid assortment of genuine rules of law which were applicable at once and without further implementation by specific statutes, of declaratory statements of policy to be made applicable only by subsequent executory legislation—which, in many cases, failed to materialize,—and of principles and postulates of merely programmatic character. This maze of divergent provisions resembled in part a catechism of humanitarian ethics, in part a law book or code on civil liberties. To bring these unequal elements into a comprehensive and workable legal system was a task fraught with futility from its inception, in spite of the enormous labor devoted to it by textwriters and courts. Yet, in spite of its casuistic and uneven character, the Bill of Rights could have offered to German democracy, had it been self-confident and adequately supported by public opinion, an ample protection of the customary civil liberties. Just because it was tainted by a distinct hue of progressive collectivism in which exercise of individual rights was restricted by their possible inference on the welfare of others and of the whole community, it was wholly in keeping with the best of German idealistic tradition. As a document permeated by social though not socialistic intentions it reflected admirably the post-War pragmatism of a typically liberal bourgeois society based on private property, sanctity of contractual relations and the optimistic belief in the co-operative qualities of human nature. In its failure, however, to implement social rights by social duties to which only scanty attention was paid, it was strangely out-of-date from the start and it represented, in the last analysis, the mythology of a dying age. Seen retrospectively in the light of the tragic fate of the Weimar Republic it is evident that the framers of the Bill of Rights were unaware of the impending revolt of the masses and of the rise of the demagogue for whom fundamental rights were only the instrument for their ultimate destruction. For such unforseeable shortcomings no reasonable observer will hold responsible the well-intentioned fathers of the Constitution.

Actual Content of the Bill of Rights

The motley of rights and duties, programmatic postulates and ethical exhortations, broad institutional guarantees and detailed regulations for specific purposes, was loosely grouped together in five subdivisions. The First section, devoted to "The individual," enumerated as individual rights the following: Equality of all Germans before the law (Art. 109), involving, by specific reference, abrogation of privileges of birth or rank, the prohibition of titles unless denoting a professional calling, and the abolition of decorations bestowed by the state; Freedom of movement and free choice of domicile within the Reich (Art. 111); Freedom of emigration (Art. 112); Freedom of the person, in particular freedom from arbitrary arrest (*habeas corpus*) (Art. 114); Inviolability of the private home (Art. 115); Prohibition of retroactive criminal legislation (Art. 116); Privacy of mail, telegraphic and telephonic communication (Art. 117); finally, freedom of personal expression and of public opinion "within the general laws"; no censorship was permissible (Art. 118).

The Second section of the Bill of Rights, inscribed "The life of the community," protected family life (marriage, the position of parents in education, children born out of wedlock and youth in general) (Articles 119-122); The right of peaceful assembly (Art. 123) and the unrestricted formation of associations which, if desired, could place themselves under civil law (Art. 124); Freedom to vote and secrecy of the voting procedure (Art. 125); Equal access of all qualified persons to public office (Art. 128). This section is concluded with elaborate provisions as to position, function and exercise of public office, the officials being considered as servants of the community (Articles 129-131). Here civil rights were supplemented by civic duties such as the obligation to serve state and municipality in office and to share in the burdens of the state in accordance with property and income (Articles 132-134).

The Third section dealt with religious life. Freedom of conscience and religious worship were guaranteed (Articles 135, 136). Churches and State were separated (Art. 137) while state support for religious services was provided for if such assistance was customary (Articles 138-141).

In the Fourth section (Articles 142-150) art, science and education were placed under the benevolent protection of the State, which, on the other hand, obligated itself to refrain from any

compulsion or from any exercise of its tutelage inconsistent with the tenets of genuine liberalism. In this part, more detailed than others and rather verbose, the compromise with the Catholic Church was visibly in appearance but the hesitant solution offered by the Constitution did not lead to any serious friction with Catholic tradition.

Finally, in its Fifth and last part on "Economic Life" (Articles 151-165) the Bill of Rights tried to square the circle between the liberal concept of private property and private initiative on the one hand, and the more socialistic or collectivist ideas of utilizing private wealth and national resources for the purposes of the common good, on the other hand. While private property was solemnly recognized (Art. 153) it was at the same time subjected to restrictions by the state deemed necessary for the common welfare; range and limits of such restrictions were not specified. Deprivation of property for the sake of eminent domain was permissible though, as a rule, only against adequate compensation. Yet one cannot fail to admit that private property, the mainstay of liberal economics, was less well protected in theory and practice of the Weimar order than one might have assumed within the framework of liberal institutions, and that here the liberal Constitution unconsciously preluded to the later overthrow of private capitalism by the National Socialists, particularly since the provisions surrounding the sanctity of private property were among those which were suspendable under the emergency conditions of Art. 48.

The Reich Economic Council

This last section on economic life referred also, by way of a programmatic promise, to the eventuality of "nationalization" (in Germany called *"Sozialisierung"*) of "suitable private economic enterprises" (Art. 156). In close relation with this ultimate purpose an elaborate system of occupational or economic representation, based on equal participation of capital and labor, was envisaged (Art. 165). Of this comprehensive scheme of industrial democracy only two disjointed sections were established by the subsequent legislation of the Republic, namely, at the basis of the economic pyramid, the shop councils of workers and employees in each sizable enterprise (*"Betriebsraete"*), and the Reich Economic Council (*"Reichswirtschaftsrat"*) as its apex. Too sanguine hopes, which many Germans entertained towards this novel scheme as a means for attaining reconciliation between

the interests of labor and capital and for the furtherance of co-operative spirit in industry, were disappointed. Though among the members there were not a few of the leaders of capital and labor and a number of eminent specialists in industrial relations, all that the Reich Economic Council achieved,—and in fact under given circumstances was able to achieve,—was to become a consultative body for the preparation of economic legislation, not very dissimilar to the Royal Commissions in England. But in view of its limited powers its influence was meager and as an institution it failed completely to integrate itself into the political life of the nation.

Limitations Inherent in the Bill of Rights

That the Bill of Rights did not succeed in asserting its claim as a body of inviolate and intangible rights of the people was due, among other causes intimately related to the general submissiveness of the German character, to a particular situation which the Weimar Republic again inherited from its predecessors. In order to be genuinely "fundamental" the guarantees of civil liberties must be absolutely safe, not only from arbitrary inroads of the government and the administrative agencies; in this sense the practice of civil rights under Weimar left little to be desired. But civil liberties must also be fortified against curtailment by parliamentary legislation. In this respect many of the fundamental rights were by no means immune, owing to the specific feature of the German tradition in the technique of drafting. The American citizens' civil liberties are protected unconditionally from Government and administration no less than from the legislatures both Federal and of the states. Contrariwise, the German citizens' rights were secured only conditionally. To most of the fundamental rights the proviso was explicitly added that their exercise was guaranteed only within the limits of the existing or of future statutes. Thus by the Constitution itself the Reichstag was empowered to determine, by way of ordinary legislation, range and limits, content and exercise of civil liberties. This reservation in favor of the legislator reveals, as it does likewise in most of the "liberal" constitutions promulgated in Europe, the traditional relationship between liberty and authority under which liberty is subjected to the tutelage of authority. State necessity was allowed to override the solemn guarantees of individual rights.

Moreover, the factual absence of judicial review in Republican

Germany tended to militate against the actual enforcement of individual guarantees solemnly incorporated in the Constitution. By the same token, the misuse of the constitutional amendment procedure for opportunistic or temporary deviations from the fundamental charter [1] was responsible for the continuous process of "hollowing out" the sacrosanctity of alleged inviolate rights of the citizen. Most of the "statutes involving a constitutional amendment" were passed by the Reichstag for allowing exceptions from the "inviolate" individual guarantees. Last but not least the authorization granted by the Constitution (Art. 48)[2] to the Reich President and the Reich Government to suspend temporarily the seven most important of the fundamental rights in times of emergency, placed the fundamental rights at the mercy of the Government. The *habitat* of the "police state" was stronger than the new gospel of self-determination of the citizens under democratic institutions. During the last two years of the Republic the Bill of Rights had factually ceased to exist by virtue of the constitutional charter itself. Individually and severally the factors mentioned had contributed to such an erosion of civil liberties that in the long run public opinion resigned itself to the fact that their validity was at best conditional and thus precarious. When the National Socialists, in 1933, rudely pushed aside the Bill of Rights, together with the constitutional charter itself, for the people the break with the past was less violent than it might be assumed by one who reads only the letter of the "most democratic constitution of the world" without being aware of how it was operated in reality by Republican governments.

[1] See *supra*, p. 390 f.
[2] See *supra*, p. 367.

CHAPTER XVII. THE BALANCE SHEET OF THE WEIMAR REPUBLIC

In the official doctrine of National Socialism, the Weimar Republic is scornfully or sarcastically referred to as the "fourteen years of humiliation," or the "interregnum," or simply the "system," signifying political ineptitude, degradation, and corruption. Yet the period between the fall of the Second and the rise of the Third Reich includes, together with obvious frustrations and deplorable shortcomings, a number of achievements without which National Socialism never could have reached its political aims. For fairness' sake, a summary of both the success and the causes for the downfall of the Weimar Republic should not be omitted in an evaluation of its constitutional life.

(1) Achievements of the Weimar Republic

Fulminating against the hardships of the Treaty of Versailles was, next to cashing in on the anti-Semitic prepossessions of the German people, the most successful propagandist device of the National Socialists in overthrowing the Republic. After all, the Peace Treaty was less catastrophic than nationalism likes to portray it. Certainly it was a punitive peace, garnished with many senseless humiliations which operated as constant irritants; but it was not a Punic Peace, such as Imperial militarism, gone stark mad, tried to impose on temporarily defeated Russia and Rumania in Brest-Litovsk and Bucharest (1917-18) or as Nazi militarism, as briefly, we hope, forced upon Czechoslovakia and Poland. The Peace settlement of 1919 left intact Germany's national unity and allowed the defeated nation to work out its own internal solution without manifest interference. Furthermore, as shown by later events, the Treaty did not prevent Germany from overcoming territorial losses—serious as they were—and economic restrictions which, dictated by criminal ignorance of the economic realities on the part of the peacemakers, could not be enforced. The Weimar Republic—and this is the lasting achievement of Dr. Stresemann and the parties supporting the

Weimar coalition—succeeded in "whittling away" many of the most oppressive clauses of the treaty by the "policy of fulfilment" (*Erfuellungspolitik*). Tangible results of the Locarno Treaty were Germany's cordial admission to the European community of Nations and to the League, the evacuation of the Rhineland five years before the appointed day, and a settlement of the tormenting problem of the reparations in the Dawes (1924) and Young (1926) plans, no longer flagrantly inconsistent with the postulates of economic reason. *Gleichberechtigung* (political equality) was finally obtained and Germany became again, less than a decade after the defeat, a first-rate power in Europe. That equality in armaments was not granted was due, not only to lack of foresight on the part of the mediocre lawyers acting as French statesmen, but to the hardening of world opinion in the face of German nationalist reaction after 1930. But even "unarmed" Germany remained safe from attacks by the Czechs, the Poles, the Norwegians, and, for that matter, the British.

Much has been attributed to the continued foreign pressure on the Republic, and with a great deal of truth at that. Continued vexations of the victors in the first years after Versailles, the useless sanctions through occupation of territory, support for separatist movements, unnecessary harshness in the execution of the treaty clauses, harassed immensely the Governments willing to fulfil, because they knew that resistance would mean dismemberment of the Reich. But foreign pressure relaxed after 1924, and it was the policy of indirect treaty violations, by Republican governments, such as the toleration of the "Black Reichswehr" [1] and the disingenuous move of Dr. Bruening for "cold *Anschluss*" by way of a customs union, which aroused the suspicion even of benevolent foreign governments.

The reparation settlement was instrumental to an influx of foreign loans which helped, on the one hand, to pay the reparations until a final arrangement had been reached. On the other hand, the foreign loans were used by Germany for rebuilding and overhauling her industrial plant, which, when Hitler seized power, was second to none in the world. Thus Hitler's success in building up Germany's industrial and economic structure for

[1] During the whole period of the Republic almost every Government connived at the secret training, by the army, or *Reichswehr*, of forces exceeding the limit set by the Treaty of Versailles, whereby "cadres" of trained men were maintained even at the time when Republican Germany was allegedly disarmed completely. Journalists exposing these flagrant violations of the treaty were sentenced to long terms of prison for treason. Among them was the Nobel prize-winner Ossietzky.

military preparedness was due to the efforts of the Republic. Germany had even overcome the greatest catastrophe which could befall a nation of thrifty and parsimonious small savers, namely, the inflation of 1922-23. Without the world depression after 1930, signaled by the crash of the New York stock market and widespread bank failures in Austria and Germany, German financial and economic structure was as sound as those of other nations which, though victorious in the World War, were no less victimized by the world depression. Unemployment, it is true, did not disappear and could not disappear, since it was an outgrowth of the modern system of private capitalism in a technological age, ineradicable also in economically well balanced countries. Many outward signs pointed towards the return of normalcy in Germany in the prosperous years after 1924.

Improved economic and social conditions were mirrored in the high level of cultural achievements. Although the cultural life of Weimar is now described by National Socialism as "degenerate," "effete," and "depraved," its contributions to human enrichment were scarcely reached by any other country. Cultural competition of state and municipalities of the *Laender* tried not without success to compensate for the loss of dynastic splendor. The relations between State and churches, firmly based on the principle of freedom of worship and unrestricted tolerance enshrined by the Constitution, were regulated by treaties with the Holy See (Concordats) and the Protestant churches. Cultivation of the arts, now assailed by National Socialism as "cultural bolshevism," was progressive, bold in experimentation though occasionally licentious, and fully accessible to the masses. Democratization of cultural life had begun in earnest. Finally, the Constitution proper, grave as its structural shortcomings undoubtedly were, accustomed the German people to the benefits of orderly processes in workaday life and to the security springing from the legality of due process of law which controlled impartially private as well as public relations. Most important of all, the Weimar Constitution preserved German unity, acquired at immense costs by the preceding generations. Had the Reich not been saved by the Republic, the result would have been Balkanization in the heart of Europe.

(2) Causes of the Failure of the Weimar Republic

On the debit side of the Weimar ledger numerous entries were ominous portents of the future. Competent and objective

observers agree that the Weimar Republic committed suicide. Some of the symptoms leading ultimately to the lethal outcome may be tentatively listed here. It has been asserted that a nation accustomed to monarchy was unsuited to democratic self-government. Yet the monarchical idea, and with it prospects of restoration, had died with the defeat and the flight of the Hohenzollern clan. At no time, with the possible exception of the last months of Republican agony, had restoration the slightest chance, although the President of the Reich, Hindenburg, was a professed monarchist. Thus, though it may be misleading to describe Weimar as a Republic without Republicans, Germany after 1918 was a democracy without democrats. In the elections of 1932, which heralded the internal disintegration of Weimar, no less than three-fourths of the German people voted for anti-democratic parties of the Right or the Left. But this abnormal turn of the German mind could happen only because the Republic had no resolute democratic leaders; the very name of democracy was rarely invoked officially. No wonder that the men in control failed to inspire the masses with that heartfelt loyalty which means national survival. On the other hand, grave errors were committed in allowing the nationalist reaction and the Hitler movement to monopolize patriotism. Moreover, the internecine struggle between Socialists and Communists, both opposed to reaction, jeopardized from the outset the chances of the Republic. The Socialist party organization had become so tainted by bourgeois mentality that its revolutionary élan was spent and broken before the final test came. Gravely did both Socialist and bourgeois Governments sin in allowing the public services to carry on without subjecting the reactionary officials and judges to a purge. Outright sabotage occurred among the judges of the criminal courts who with impunity weighed with different measures the political activities of the Right and of the Left. Finally, the army was permitted to remain a state within the State, and even Left-minded governments were unwilling to bring the army under effective parliamentary control. In spite of the elaborate precautions of the Constitution to forestall resurrection of a super-government of the army, the militaristic machine remained in fact unaffected by political change. Nothing could please the army leaders more than the "stabbing-in-the-back" legend invented by the nationalist propaganda, making the Socialists and pacifists alike a convenient scapegoat for the failures of the General Staff. The German people were incapable of accepting defeat

and making the best of it. Had Marshal Foch dictated the peace in Berlin, thus driving home the collapse of the army to the masses, perhaps the Germans would have learned their lesson for once. While the army command, backed by the prestige of Hindenburg, brooked no interference from "civilian" governments, it had its hand in almost all matters of purely civilian nature, in conformity with the unbroken tradition of German political life. But perhaps the greatest sin of omission, most directly responsible for the downfall of the Republic, was the inability of Republican governments to understand what political power means and how to use it. Socialists and Liberals alike were entangled in the false concept of legality as an equal opportunity for all political forces to gain access to political power. Childishly, the idealists among them believed in the intrinsic value of democracy and its ultimate superiority over authoritarian or dictatorial doctrines, without taking measures for protecting democracy from the *saboteurs*. All German governments whatever their party tinge, failed to understand the new technique, practiced in a masterly way by Hitler, of the Trojan horse of democratic legality, of utilizing the equalitarian institutions of the Constitution for undermining and destroying the very institutions they were allowed to exploit. German democracy was utterly fair, constitutional, legalistic, but not militant. Anti-parliamentarian and anti-democratic movements were permitted to use and erode parliamentary and democratic institutions. The same energetic and resolute use of legislative and administrative curbs against political extremism of the Right as they were relentlessly applied against the Left would have nipped the revolutionary movement of the anti-democratic parties in the bud. Abnormal times called for abnormal means of defense and protection, as was the case in other equally threatened democracies after 1933. Scrupulously protected was the freedom of those who were out for the destruction of the very freedom which brought them into power. But the leaders themselves, fascinated by the "patriotic" ingredients of the National Socialist conviction, had lost confidence in the democracy and thus, wittingly or unwittingly, became instruments for the suicide of the Republic.

PART IV. THE THIRD REICH (FROM 1933)

SECTION I. NATIONAL SOCIALISM AND THE WEIMAR REPUBLIC

CHAPTER XVIII. THE RISE OF THE NATIONAL SOCIALIST MOVEMENT [1]

The Third Reich a Creation of Hitler

Forever philosophers of history have argued whether the success of a political leader is attributable to favorable circumstances, or whether his action produces favorable circumstances conditional for his success. In the case of Adolf Hitler and the Third Reich, the answer is fairly obvious: Hitler created the National Socialist movement as an instrument of political power, and through this instrument he created the Third Reich. He made circumstances serve his ends. It was Hitler who as a master molded the sentimental traditions and emotional obsessions of the German bourgeoisie into the most refined and technically perfect system of political power, maintained through physical and mental coercion. In building first the party and, later through the party, the Third Reich, Hitler gave ample evidence of three qualities which individually and severally are the marks of the political leader. He excelled as an orator, as an organizer,

[1] The following section on the Third Reich, written for this volume, was completed by September 1, 1939, just before the outbreak of the war between the Western Powers and National Socialist Germany. Because of the timeliness of the subject the section was published as a separate book under the title *Hitler's Germany* (Macmillan 1939); it contained also the last chapter on "The Third Reich and the War."

In its present form the section has been enlarged by additional material referring to internal and external events since the beginning of hostilities. It should be noted, however, that, as to the actually existing conditions inside Germany at war, no source material is available at the present moment which would satisfy scientific standards of objective information. Consequently, the reader should bear in mind that the following presentation of the Third Reich discusses National Socialist Germany as she existed before the outbreak of the current war, and that structural changes in the conduct of internal government if such changes occurred are not recorded therein.

and as a man endowed with an uncanny sense of timing—that is, of adjusting his actions to opportunities, and of being able to wait until he could act. He developed these talents during his long years of apprenticeship, and knew how to maintain them during Germany's march to world power. The National Socialist Party and the Third Reich would never have arisen without Hitler.

Development of the National Socialist Party

The spectacular rise of the *Nationalsozialistische Deutsche Arbeiterpartei* (NSDAP) from a small group to the strongest party of the Weimar Republic has been often told. Three different stages of evolution are clearly discernible. The first reaches to the abortive "putsch" of 1923; the second, to the landslide of the party at the elections of September 1930; the third, to the seizure of power on January 30, 1933. At first the German National Socialist Workers Party was one among the myriad of small political debating conventicles which in the hectic years after the armistice sprang up all over Germany. Hitler, himself at that time a demobilized soldier and a sort of spy or agitator in the pay of the army, joined the group sometime early in 1919 as the seventh member. Through entirely novel methods of propaganda and organization, the party—styled a "movement" in order to advertise its fundamental difference from other merely political parties—soon attracted attention far beyond its numerical strength. Bavaria, still smarting from the shock of the farcical and short-lived Soviet Republic of 1919, was at that time the center of anti-Marxian, anti-democratic, and violently nationalistic tendencies. Police and officials of the reactionary Government sheltered opponents of the Weimar Republic and political fugitives from justice. While the Bavarian Government under Dr. von Kahr, at the height of the inflation and the desperation of the masses during the Ruhr occupation, was itself preparing a rebellion against the Reich Government, Hitler, taken into confidence by the conspirators, impatiently staged a putsch within a putsch—the famous Beer-hall revolt of November 8-9, 1923. In a veritable comedy of betrayals and double crossings, the official rebellion dropped its ally and, under the single volley of scarcely more than a platoon of the Bavarian police, the first effort of National Socialism to seize power by force ended ignominiously. On April 1, 1924, Hitler was sentenced to a mild term of honorable seclusion in the pleasant fortress of Landsberg,

GERMANY and CENTRAL EUROPE 1933

Scale of Miles: 0 50 100 150 200

Territory lost by Germany by the Treaty of Versailles

Former Austro-Hungarian Empire

NORTH SEA
BALTIC SEA
DENMARK
Memel
Königsberg
Danzig
Kiel
Lübeck
Hamburg
MECKLENBURG
Stettin
Groningen
OLDENBURG
Bremen
Elbe
Weser
Amsterdam
The Hague
Rotterdam
NETHERLANDS
Berlin
Bydgoszcz
Poznan
Oder
Warsaw
Bug
Brest Litovsk
POLAND
Münster
LIPPE
Sch. L.
BRUNSWICK
HARZ MTS.
ANHALT
Magdeburg
Duisburg
Dortmund
Essen
Düsseldorf
Ruhr
Antwerp
Brussels
Liége
Lille
BELGIUM
Aachen
Köln (Cologne)
WESTERWALD
Th.
THURINGIA
Leipzig
Dresden
SUDETEN MTS.
SAXONY
Łódź
Lublin
Breslau
U. S. S. R.
EIFEL MTS.
TAUNUS
Frankfurt
LUXEMBOURG
Mainz
Cracow
Vistula
Lwów (Lemberg)
Prague
Pilsen
Mhc. Ostrau
CZECHOSLOVAKIA
SAAR BASIN
PALATINATE (to Bav.)
Moselle
LORRAINE
Nürnberg
BOHEMIAN FOREST
Brno
Karlsruhe
Nancy
Stuttgart
Strasbourg
WURTTEMBERG
BLACK FOREST
Danube
BAVARIAN FOREST
Uzsok Pass
Augsburg
Munich
Linz
Vienna
Bratislava
Czernăuți
Dniester
Pruth
Basle
Zürich
Berne
SWITZERLAND
AUSTRIA
MATRA
Budapest
Debrecen
HUNGARY
Iași
Chișinau
Brenner Pass
St Gotthard
Simplon P.
Graz
BAKONY
Tisza
Cluj
Geneva
Lyons
Drau
Szeged
BIHAR MTS.
RUMANIA
Trento
Gorizia
Subotica
Sibiu
Galați
Milan
Verona
Trieste
Zagreb
CROATIA
BANAT
Rhone
Mt. Cenis P.
Turin
Venice
Fiume
Sava
SLAVONIA
Iron Gate
Bucharest
Constanța
Belgrade
Bologna
Genoa
Marseilles
Toulon
Nice
ADRIATIC SEA
Zara (to Italy)
Florence
Leghorn
Sarajevo
Danube
Niš
BULGARIA
BLACK SEA
Burgas
Sofia
Plovdiv
BALKAN MTS.
Raisz

but was soon released. The party was outlawed. Hitler used his leisure in Landsberg well, and dictated to his friend and co-prisoner, Rudolf Hess, a former student, now Deputy-Leader of the party, the first volume of the National Socialist Bible, *Mein Kampf*.

The moment when Hitler threw himself on the wet pavement to escape the bullets of the police was a turning point in his career. He realized that political power cannot be gained by revolutionary means if army and police remain loyal to the legitimate government. Political power could be won only by ballots and through "legal" methods. Henceforward his tactics were concentrated on building up a regular political party which, at the same time, should become the core of a political religion. A new technique of mass propaganda and mass emotionalism was evolved, fundamentally different from the amateurish practices of other political parties in attracting the masses. Yet after his release from the fortress it took him six years to become the undisputed leader of a mass party, and without the disaster of the world depression, which broke loose in Germany in 1930, he would never have succeeded. After the putsch the outlawed party was scarcely alive. Even after the ban had been lifted, the party failed to obtain a mass basis.[1] In March 1930 Dr. Bruening took over the Chancellorship as the personal confidant of the Reich President von Hindenburg. Less than six months later, by a landslide unprecedented in German parliamentary history, the NSDAP rose from 12 to 107 deputies in the Reichstag, from a small faction to the second strongest party.

Composition of the National Socialist Party

In order to evaluate the sudden emergence of the Nazis between the two elections of 1928—the climax of post-War prosperity in Germany and of Stresemann's success in bringing back Germany to the community of nations—and 1930, one must

[1] The following tabulation shows the increase of votes and seats of the NSDAP from 1924 to 1933:

Election	*Seats*	*Votes*
May 4, 1924	7 *	(unknown)
December 7, 1924	14	907,000
May 5, 1928	12	810,000
September 14, 1930	107	6,409,000
July 31, 1932	230	13,779,000
November 6, 1932	196	11,737,000
March 5, 1933	288	17,277,000

* On the ticket of the combined "folkish parties," which obtained 32 seats.

remember that in 1930 the world depression clamped down on Germany with its bank failures, falling prices, unemployment, and suddenly spreading economic misery. In its early political career, the NSDAP was the political refuge for demobilized professional soldiers unable to adjust themselves to civilian life; for adventurers of fortune, social misfits, and cranks; for a good many of the white-collar proletariat of frustrated intellectuals and unemployed clerks—a strange motley of hooligans, criminals, and idealists, who formed the cadres into which, later on, the masses of voters were to flow. In the landslide of 1930 most of the new recruits endorsing the Swastika came from the lower middle classes, whose economic backbone had been broken by the inflation of 1923 and the deflation thereafter. With their savings, the slender roots of economic security protecting them from proletarianization had been destroyed. The masses of "respectable" voters such as shopkeepers, artisans, clerks and unemployed, were drawn mostly from the bourgeois parties of the lower middle class, and from the nationalistic Right parties. This stratum was enticed by the socialist as well as by the anti-socialist ingredients of Hitler's program. From the outset the party drew its strength from youth. But it was by a stroke of genius that Hitler succeeded, in the following years, in enlisting as well the moral and financial support of influential figures in industry and big business, who were attracted by the hostility of National Socialism towards organized labor and the trade unions. Since he was careful not to identify himself with feudal reaction, which he fought as violently as any other party of the Left, he could hold the support of the dispossessed masses. The army, secretly sneering at the uncouth upstart, maintained a benevolent neutrality towards a super-patriotic movement promising the restoration of military ascendancy. The party made, however, scanty inroads on organized Socialism of both flavors, and none at all on the Catholic Center, though many members of the Protestant clergy embraced the new gospel at an early date.

Causes for the Triumph of the National Socialist Party

The spectacular rise of the Nazi Party is due to various and divergent causes. In the first place, Hitler's magnetic personality cast its spell on a nation in which "educated" men had heretofore monopolized political leadership of the bourgeois classes. He knew how to instill into those with whom he came in personal contact a fanatical devotion and the spirit of sacrifice which dis-

tinguishes a political religion from a political party proper. Many were influenced by his oratorical talents. The Germans were not used to political rhetoric; they formed their political opinions by reading the press and reasoning among themselves, preferably over their beer-mugs. Perhaps the strongest inducement emanated from an entirely novel and unprecedented political technique. It inaugurated the emotional mechanism of mammoth mass meetings and public demonstrations staged with consummate skill, showmanship, and a deep insight into the psychic *lacunæ* of the democratic form of government, based on persuasion instead of emotion. His political offerings catered to every taste. Moreover, the party was organized on military lines. From the beginning a party militia existed as bodyguard and stewards in meetings. These skeleton groups grew into a vast paramilitary organization for carrying violence into the streets and the assemblies of the other parties, for fortifying the spirit of its own adherents as well as for intimidating its opponents. The brown uniforms of the SA (*Sturmabteilung*, or Assault Guard) and the black military garb of the SS (*Schutzstaffel*), or Elite Guard), tolerated by the Republic in suicidal negligence,[1] became an ubiquitous sight. Unlike other political parties, which maintained skeleton organizations between elections and awakened only at election times, the NSDAP organized and propagandized without interruption, carrying its meetings and demonstrations into the smallest village and hamlet. Suddenly, in place of the rather idyllic party life of the past few years, a new militancy and fury swept over the nation, which, unprepared as it was, failed to mobilize resistance to this unprecedented onslaught. The printed as much as the spoken word was used as never before. A novel technique of tabloid emotionalism was invented. Oversimplification, distortion, and outright lies were not answerable by reasoned refutation. In the remarkable passages of his *Mein Kampf* dealing with the elements of political propaganda, Hitler gives all the recipes on which his sensational success was ultimately based. Writes Hitler: "The German has not the faintest idea of how a nation must be swindled if one wants to have masses of supporters." The tangible simplicity of the argument, boiled down to the minimum of intelligibility, convinced the mass mind. Oratory and the printed word were inflammatory,

[1] Only in 1932 was an anti-uniform ordinance issued by the Cabinet of Dr. Bruening, at the instance of the Minister of the Interior, General Groener; it was rescinded after a few weeks, and Groener lost his position.

contradictory yet eloquent. The most popular weapons in the armory of emotionalism were attacks against Versailles, the "war-guilt lie," the "policy of fulfilment," playing up to the militaristic sentiments of the masses, and, most effective of all, rampant anti-Semitism, for which Germany was ever the most fertile field. Anti-Semitism, aptly called the "socialism of fools," was admirably suited to focusing resentment on a scapegoat responsible for all evils of state, society, and the individual, and offered endless opportunities for variation.[1] In its organization, the NSDAP was patterned on the discipline of the army, on command and obedience. In its propaganda it adopted what was considered the "American way" of advertisement, of Barnum and Bailey technique. It did all that the Republic had failed to do in mobilizing symbolism of the flag (Swastika), hero-worship disguised as devotion to the leader, and enthusiasm for the cause. It set before the masses an objective worthy of sacrifice and promising rich spoils after the victory.

The Bid for Power, 1930-1933

During the third period of the incubation of the Third Reich, from the electoral victory of 1930 to the Chancellorship of Hitler on January 30, 1933, the movement increased its hold on the masses of the German voters. Hitler made various unsuccessful attempts to obtain control of the government by normal political means. In the election for the Reich Presidency (March 13-April 10, 1932) he failed to win, by a wide margin, against Hindenburg, supported by all parties except the Communists.[2] In addition, the NSDAP tried to capture as many as possible of the Laender parliaments and governments, but was unable to get control of any of the key states. Finally, the National Socialists became in the elections of July 31, 1932, the strongest party of the Reichstag (230 out of 608 seats) and raised the claim, justified in parliamentary usage, to the Chancellorship and the formation of the Cabinet. Here begins the long series of backstage intrigues, double-crossings, and cheatings not yet fully revealed, which accompany the last months of the Republic in agony. At first the

[1] Hitler himself pretends to have discovered anti-Semitism in his years in Vienna, where the Christian Socialist party of Dr. Lueger and the violently nationalistic group of the *Alldeutsche* headed by Schoenerer had practiced it. It is more likely that his hatred for the Jews is due to some personal reasons as yet unknown.

[2]

First ballot:	Hindenburg	18,651,000 votes	49.6%
	Hitler	11,339,000 "	30.1
Second ballot:	Hindenburg	19,360,000 "	53.0
	Hitler	13,418,000 "	36.8

Nationalist reaction tried to steal the thunder of the National Socialist competitors. The old man in the Reich presidency wholeheartedly disliked the "Bohemian corporal." Hitler, on the other hand, held out tenaciously for the totality of power, and steadfastly refused participation in a coalition government to be formed with the Nationalists and the Catholic Center Party. But the "Barons' Cabinet" of von Papen, called illegally into power after Dr. Bruening's dismissal in May 1932, frustrated all efforts. When the Cabinet of von Papen, which controlled only 6% of the total of seats, became certain of being defeated by a vote of non-confidence, the Reichstag was again dissolved (September 6, 1933). The National Socialist Party was in the throes of the most serious crisis since 1923. The industrialists withheld financial support; the rank and file of the party as well as some of the leaders, among them Gregor Strasser, began to rebel against Hitler; the party was in full disintegration. Consequently the NSDAP suffered a severe setback at the elections. They declined from 230 to 196 seats, and from 37.4% to 33.1% of the total vote. But Hitler proved his mettle as The Leader. Twelve years he had patiently and laboriously worked his way to power; he was not to be cheated out of it by a compromise. Von Papen, master of doublecrossing, played for him with Hindenburg the part Lord Runciman played later in his peaceful conquest of Czechoslovakia. After von Papen's resignation, the clique around the senile Reich President had General von Schleicher, for a long time, as the exponent of the Reichswehr, the power behind the throne, appointed to the Chancellorship. Although von Schleicher had no parliamentary majority and had to rely, for carrying on the government, again on the emergency powers of the President, he had a none-too-narrow chance of saving the nation from National Socialism, if not from the Junker reaction. His idea was to bring together the army with the Socialist trade unions, and perhaps also the Socialist wing of the NSDAP under Strasser, strange bedfellows as they seemed to many. The zero hour of common danger united Nationalists and National Socialists, who had already been close allies against Dr. Bruening's government in the "Harzburg Front" of 1931. As far as events can be reconstructed with some degree of certainty, Hitler and von Papen formed an alliance at a meeting in the house of a Cologne banker on January 4, 1933. To rid themselves of von Schleicher was none too difficult. When the Government threatened to make capital of the unsavory scandal of spending the "Eastern Relief"

money for private interests of the Junkers, the old Junker in the Presidency could easily be persuaded by his clique that the "Red General" was headed for "agrarian Bolshevism." The same trick had already been applied successfully in ousting Dr. Bruening. Moreover, the rumor was invented and allowed to spread that von Schleicher and the Reichswehr planned the arrest of Hitler, von Papen, the President's son Oscar, and even the President himself in order to set up a military dictatorship. Hindenburg himself, in the advanced stage of senile decay, probably had no clear notion of what was going on, but was finally won over to the previous arrangement between Hitler and von Papen. The hapless General von Schleicher was dismissed. On January 30, 1933, under delirious outbreaks of the Nazified masses, the Reich President appointed Hitler to the Chancellorship at the head of a cabinet of "National Concentration," in which the National Socialists and the Nationalists were to share power. The Third Reich had begun.

CHAPTER XIX. THE ESTABLISHMENT OF THE THIRD REICH

The Cabinet of "National Concentration" under Hitler as Reich Chancellor was appointed and constituted in conformity with the Constitution and the German variety of the parliamentary system. Of its 11 members, only 3 were National Socialists; namely, Hitler, as Reich Chancellor; Dr. Frick, as Minister of the Interior; and, last but not least, Captain Hermann Goering, as Minister without portfolio and Commissioner for Air Communications—equally important, however, as the man in control of the Prussian Police. Six Ministers were members of, or sympathizers with, the Nationalists; namely, Dr. Hugenberg (Economics and Agriculture), Dr. Guertner (Justice), Seldte (Labor, as leader of the nationalist organization of war veterans, the Steel Helmet), Elz von Ruebenach (Communications), Dr. von Schwerin-Krosigk (Finance), and von Papen as Vice-Chancellor and Reich Commissioner for Prussia. Without official party affiliation, but to be counted as Nationalists, were General von Blomberg (Defense Ministry) and von Neurath, a seasoned career diplomat in the Foreign Office. The lonely Nazis in the cabinet of Nationalist reactionaries seemed virtually "encircled"; moreover, the key-positions of the army and foreign affairs were held by what the Nationalist clique deemed "reliable" men.

But this shrewd scheme failed to reckon with the political genius of Hitler and the ruthlessness of Goering. Elaborate plans of the Nazis were held in readiness. Once more in keeping with German parliamentarism, the Reich President granted to this Cabinet without a majority in the Reichstag a dissolution in order to let the electorate decide on its tenure of office. At first the bourgeois parties and the Socialists were not disheartened; the Nazis had reached the possible peak of their voting strength of about 40% and could not expect to poll more. The election campaign of 1933 was a startling and breathtaking affair, which no-

body who lived through it will easily forget. On February 4, the Reich Government, under the signature of the President, issued an emergency ordinance [1] which subjected freedom of assembly and press to severe restrictions, aimed, as a circular letter of Goering unblushingly admitted, at the opposition parties alone. The free exercise of civil liberties, particularly essential in election times, was thus monopolized by the Government parties. From the outset, the opposition was arbitrarily curbed in the use of press, assembly, and radio, while organized and legalized violence of the National Socialist hooligans against electioneering activities of the opposition was encouraged.

But official propaganda was not yet open terror. Even intimidation could not make the voter, once he had reached the privacy of the curtained polling booth, vote for the National Socialist ticket. Providence and Captain Goering intervened. On the morning of February 27, 1933, the stunned nation learned that on the preceding evening the Communists and Socialists had fired the Reichstag building and that the vigilance of Goering and his Prussian police had uncovered a widespread Marxist conspiracy. While the building was still in flames, Communist deputies of the Reichstag and the Prussian diet, and all other Communist functionaries the police could lay hands on, were arrested, together with scores of Socialists and Liberals on the following days. On February 28, 1933, Hindenburg set his signature to a new emergency ordinance "for the protection of people and state." [2] By virtue of the emergency powers granted to the Reich President by the Weimar Constitution in the famous Article 48, the decree suspended the seven fundamental liberties: freedom of person, of speech, of press, of assembly, of association, and of privacy of mails; and authorized confiscation of property without compensation and for undetermined purposes. This emergency ordinance, still in force today, may be duly considered as the Magna Carta of the concentration camp. Moreover, it introduced the death penalty for a number of common crimes; for attacks on the person of the Reich President, the members of the Governments of the Reich and the Laender; for armed resistance; and for taking political hostages. This decree, of unheard-of severity, established in a nutshell dictatorial government, investing the Government with unlimited powers against

[1] Ordinance of the Reich President "for the protection of the German people," (RGB. I, p. 35).
[2] RGB. I, p. 83.

the opposition of whoever was considered an enemy of the regime. The rural classes especially—the farmer fears nothing more than fire—were swept off their feet and heavily endorsed the Nazi ticket. In addition, under the emergency decree, electoral freedom no longer existed. Intimidation had become terrorization and outright violence.

Behind this modern "Guy Fawkes" plot there was no real danger of a Communist insurrection, and not the slightest evidence of it was forthcoming afterwards. In the burning building of the Reichstag the police captured one van der Lubbe, who was put on trial before the Supreme Court in the autumn of 1933, together with Torgler, a leader of the Communist party of the Reichstag, and four foreign Communists picked up at random (among them George Dimitrioff, at present a leader of the Communist International in Moscow). Although conducted under outright pressure by the Government and in violation of most of the provisions of the code of procedure, the trial ended with the acquittal of the four Communists and the death sentence for van der Lubbe only, who was executed. The intriguing mystery of the Reichstag fire can now be considered as solved, less through later revelations which may be apocryphal than in view of involuntary evidential facts revealed during the trial; the court, in criminal negligence, deliberately refused to follow the cues. It seems certain that a number of Goering's henchmen, most of whom were killed off in the purge of June 1934, entered the building through a subterranean corridor from the adjacent home of the Reichstag President, who happened to be Herr Goering himself, and prepared the inflammatory material which the half-wit van der Lubbe, according to the instructions of the Nazis, ignited.

Reichstag Elections of March 5, 1933

The *coup* and its ingenious official motivation helped to boost the Hitler party ticket, but it failed to swing the election for the Government. The elections were held on March 5, 1933, without visible violations of electoral honesty. The procedure was still orderly and secret, and no definite proof of tampering with the result in the official tabulation is available. In spite of the exploitation of the Reichstag fire and terrorization of the opposition, the Government failed to obtain the hoped-for absolute majority. The National Socialists were, of course, by far the largest party, with 288 out of a total of 647 seats and 43.9% of

the total vote.[1] Only in conjunction with the Nationalists, who polled 8% of the vote and obtained 32 seats, did the Government have a slender margin above the absolute majority—namely, 340 out of 647 seats, or 51.9% of the total vote. In terms of the Weimar Constitution, then still in force, no constitutional amendment could be carried against the "constitutional" parties (Socialists, Catholics, and minor bourgeois parties) which, among them, obtained more than one-third, or 226 seats. It should be noted that by themselves the Nazis were still a minority party; the majority of the voters had rejected them.

On the following days all the German states (Laender) were "co-ordinated," by a routine procedure of staged demonstrations by the Nazified mob in the streets, by pressure and individual violence against the members of the government and officials, leading to the establishment of a local dictatorship by a party official, usually the *Gauleiter* (District Leader). No resistance to the illegal and revolutionary transfer of power was offered. The degenerate bureaucracy of the Socialists gave way; not a single trade-union house dared armed resistance; no socialist martyr died in open battle for the cause—a phenomenon reminiscent of the disappearance without resistance of the ruling class of Imperial Germany when the Revolution broke in November 1918. This ignominious surrender left the deepest impression on the masses, and could not fail to furnish a potent argument in justification of the National Socialist Revolution.

Although it may be argued whether, under these circumstances, the seizure of power by the National Socialists was a mere *coup d'état* or a genuine revolution, there is no doubt in the mind of the contemporary world that the advent of the Third Reich inaugurated a revolution of the first magnitude, comparable in fact only to the French Revolution, to which it has been appropriately linked by the Nazi doctrine itself as the counter-

[1] The Nazis drew about one million votes from the Communists, who fell from 100 to 81 seats; they wiped out the "splinter" parties; and attracted at least four millions of the habitual non-voters, which explains the extraordinarily high voting participation of 88.7%. The distribution of votes and seats is shown in the following tabulation of election results:

	Vote	*Percentage*	*Seats Obtained*
NSDAP	17,277,000	43.9	288
Nationalists	3,136,000	8.0	52
Center	4,424,000	11.2	74
Bavarian Catholics	1,076,000	2.7	18
Socialists	7,181,000	18.3	125 *
Communists	4,848,000	12.3	81
Others	1,401,000	3.6	9

* Including 5 Democrats.

revolution to the ideas of 1789 and Western civilization as a whole. In methods and contents the Nazi Revolution is patterned strikingly on the Bolshevik Revolution of 1917; 1933 piles 1917 on top of 1789.

The Enabling Act of March 24, 1933

During the weeks after their seizure of power, the National Socialists, following blueprints held in readiness, unleashed the first wave of violence and terror. It was intended to eliminate political enemies of the regime as well as to impress the irresistibility of the new order on the German nation which, disunited as it had been politically for many generations, was united in preferring the peaceful processes of the traditional rule of law to political power through violence and terror. The agencies of public opinion were co-ordinated (*gleichgeschaltet*); law enforcement authorities were brought under Nazi control by substituting reliable partisans for Republican officials. The *Rechtsstaat* disappeared, and the will of a minority became the law of the land. The people, staggered by the hurricane-like fury of events, submitted in apathy.

Thus the stage was set for legislative legalization of the regime by the Reichstag. When the Reichstag convened (March 21), the 81 Communist deputies failed to receive an "invitation"; those not assassinated were in concentration camps, in hiding, or in exile. The election of Captain Goering, a member of the Government, to the office of Speaker of the Reichstag, marked the end of the separation of executive and legislative powers.

The Enabling Act (*Ermächtigungsgesetz*) of March 24, 1933, styled an "Act for relieving the distress of nation and Reich," [1] involved in more than one aspect an amendment to the Constitution. Since the Weimar Constitution was formally still in force, the requirements of Article 76 had to be fulfilled in that a majority of two-thirds of all members had to be present, and that at least two-thirds of those present had to vote in favor of the bill. In view of the parliamentary situation, the passage of the bill hinged on the support of the Catholic Center Party. As disorganized as all other parties, the Center submitted. The bill was carried by 441 to 94 votes of the Socialists.[2] In addition, those parties which helped the Government coalition obtain the required

[1] RGB. I, p. 141.

[2] As mentioned before, the 81 Communists and a number (26) of Socialist deputies were barred from voting.

figure of two-thirds were prevented from giving a free and unbiased vote. The mob unleashed by the Government ruled the capital; armed Brownshirts filled the halls of the parliament; and the vote was taken in an indescribable atmosphere of terrorization and coercion.

The Enabling Act, acclaimed by the National Socialist doctrine as the first "organic statute of the Third Reich," is the pivotal constitutional document of the regime. At first declared in force until April 1, 1937, it was twice, on January 30, 1937, and on January 30, 1939, continued by the Reichstag.[1] The latter prolongation provided that the statute should remain in force for another four years, beginning with the election of the Reichstag which passed the Continuation Act (April 10, 1938) and ending five years after its first session; that is, May 10, 1943. Until the enactment of a new Constitution by the Third Reich, of which there is no prospect, the Enabling Act should be considered as the constitutional basis and legal foundation of the National Socialist dictatorship. In brief, the Enabling Act embodies the fundamental principle of dictatorship which constitutes the clear borderline between this specific form of government and democratic, or constitutional, government—namely, the abolition of the separation of legislative and executive powers in favor of a concentration of all powers in the hands of the Executive, the Government. Moreover, exercise of all powers and functions by the Government alone is unlimited in time and without any constitutional limitations whatsoever.

The governmental machinery set up by the Act introduces a new type of legislation, supplementing and superseding the legislative powers of the Reichstag, the so-called government decrees (*Regierungsgesetz*), issued without further formalities or requirements by the Reich Government (Art. 1). Moreover—and this is in fact the legal key which opened the door for the subsequent complete reconstruction of the constitutional system—"the statutes decreed by the Government may deviate from the Constitution with the reservation that they should not affect the institutions of the Reichstag and the Federal Council" (Art. 2, sentence 1). In addition, it is explicitly stipulated that "the powers of the Reich President are to remain intact" (Art. 2, sentence 2). None of these solemn guarantees was maintained; the Federal Council was abolished in March 1934; and the office of Reich President, after the death of von Hindenburg, was fused with

[1] RGB. I, p. 105 (1937) and RGB. I, p. 95 (1939).

the office of the "Fuehrer" and Reich Chancellor on August 1, 1934.[1] Be it noted that the regular type of legislation, that of statutes passed by the Reichstag, was not legally precluded. Subsequently, in isolated instances, the Reichstag was convened to pass on acts introduced by the Government if their importance from the viewpoint of internal or foreign policy rendered such a formal procedure desirable. On the whole, however, legislation by Government decree has become the rule, and legislative participation of the Reichstag the rare exception.

This amazingly simple machinery of government recommended itself, by contrast to the elaborate cog-wheel system of democratic checks and balances of the Weimar order, to a people weary of parliamentary complications and endless deadlocks. By a few printed lines in the statute book—behind which, it is well to remember, stood the unbridled violence of the organized mob of the party—the Government not only monopolized the regular legislative function but also seized the totality of the amending power.

It is today perhaps a moot problem to argue about the legality of the "Enabling Act." Political power is a matter of might and not of right and it is commonly recognized that a successful revolution is the basis for the new legal order. Yet, since National Socialism after the abortive putsch of 1923 made the "legal" conquest of power a cornerstone of its propaganda, it should be emphasized, if only in passing, that the whole procedure through which the "Enabling Act" reached the patient statute book, is beset with a number of crude illegalities without which the crucial two-thirds majority demanded by the Weimar Constitution for constitutional amendments would never have been obtained.

The Validity of the Weimar Constitution under the Third Reich

Although never formally abolished, the Weimar Constitution, to all practical intents and purposes, is dead beyond resurrection. Since the Government, by simple decree, may establish new constitutional law, institutions and provisions of the Weimar Constitution in conflict with the new tenets of the Third Reich have been materially abrogated. Occasionally organs and institutions of the Weimar Charter, such as the Federal Council and the

[1] See *infra*, p. 426.

Reich Economic Council in 1934, have been formally abolished. All institutions and provisions deemed inconsistent with the National Socialist principle of the totalitarian leadership state have ceased to retain legal or practical force. The judge in applying the new law has to decide whether a statutory provision of the former constitutional system not yet formally repealed is in conflict with the new order. The new law, as the binding expression of the Leader's will, claims precedence of right over all other rules of law, whatever their source. Rules passed prior to the advent of the Third Reich the judge is bound to apply and interpret in conformity with the "spirit of National Socialism"—whatever this may mean. In the first years some difficulties arose in connection with the fundamental rights enshrined in the second part of the Weimar Constitution. The most important among them were already suspended on the basis of the Emergency Ordinance of the Reich President of February 28, 1933.[1] This temporary expedient has never been repealed, although the regime has stabilized itself in the meantime. But most of the other guaranteed rights were equally overruled by implication, through Government decrees in contradiction to all fundamental requirements of the rule of law and due process accepted by Western constitutionalism. Violations of the freedom of press, free speech, assembly, political organization, equality before the law, and what Germans called the "vested rights" of certain groups such as churches or public officials, have become so common and so frequent that presently they were no longer noticed. The Germans seem to have completely forgotten that individual or group rights ever existed and were protected from the interference of the State by an elaborate system of due process of law.

[1] See *supra*, p. 414.

CHAPTER XX. THE CONSOLIDATION OF THE REGIME (MARCH 1933 TO AUGUST 1934)

The political evolution of the Third Reich may conveniently be divided into two periods of unequal length. The first, devoted to the consolidation of power after a victory whose swiftness may have surprised even the leaders, stretches from the "legal" conquest of power to the fusion of the offices of Reich President and Reich Chancellor after the death of von Hindenburg (August 1, 1934). By that time the contour of the future constitutional structure of the Third Reich was drawn in definite lines. Later additions, even through so-called "organic" statutes, have changed little of the frame of government. During this period of internal consolidation the conduct of foreign relations was cautious—aggressive only in words for home consumption, not in actions. Foreign policies were determined by the lack of stability of internal conditions.

The second period takes shape roughly in 1935-1936, when the regime, having entrenched firmly its control over the nation, began to turn internal dynamism against the outside world, at first for "liberation" from the remaining fetters of the Versailles treaty, under the slogan of "international equality" or "racial self-determination"; in due course for the sake of European hegemony as prelude to world control, now under the slogan of *"Lebensraum"* ("living space"). During this period, which began with the occupation of the de-militarized zone of the Rhineland (March 1936), internal policies, now fully mastered by the new governmental technique, are determined completely by the exigencies of foreign policies. Consolidation of power, preceding necessarily the bid for world power as predicted in *Mein Kampf,* had become so unshakable that the Third Reich was able to live through the periods of international tension preceding the outbreak of the war in September 1939 without visible strain of its internal structure.

Measures for the Protection of the Regime

After the enactment of the Enabling Act, the fight against "enemies of the state," identified with enemies of the victorious party, could be taken up "legally." By a series of additions to criminal law, acts of actual resistance or of organizing or expressing political opposition are exposed to drastic punishment. Special Tribunals are established and the death penalty is threatened for a number of common crimes; confiscation of property of "enemies of the state" is permissible; at first directed mainly against Communists and Socialists, it was extended to anyone opposing the regime by labeling him a Communist or Marxist. German nationals beyond the reach of physical violence of the Reich are deprived, by simple administrative act, of their nationality and their property if their activities are deemed harmful to the interests of the regime.[1] Finally, a statute, delicately styled "for the safeguarding of the peace of law," [2] imposes the death penalty on those venturing attacks on State or party officials, and for anti-State propaganda even if committed abroad. Other acts harmful to the regime, including the malicious spreading of news considered detrimental to the prestige of the Third Reich (now known in Germany under the name of *Heimtückegesetz*) are punishable by penal servitude or prison. Simultaneously with these measures for spreading terror through the statute book, illegal arrests without trial, indefinite detention in police prisons, jails and concentration camps, and an elaborate system of organized violence became integral institutions for the protection of the regime.

Dissolution of Parties and the Establishment of the One-Party State

Rapidly the old parties were "liquidated." The Communist party was outlawed in March; the Socialists were eliminated in June. The Center and the smaller bourgeois parties, with the generous help of the Secret Police, committed suicide by voluntary self-dissolution. The same lot befell, in June 1933, the Nationalist party, the partner of the Nazis in the Government coalition. Since the seizure of power, the party had been in complete disintegration and had lost all influence whatsoever in the Government. The "Steel Helmet," the only semi-military

[1] Law of July 14, 1933 (RGB. I, p. 480).
[2] Of October 13, 1933 (RGB. I, p. 723).

organization besides SA and SS, was forcibly incorporated into the SA. A living corpse, Dr. Hugenberg resigned from the Cabinet June 27, 1933; other members of the Nationalist party whose services were deemed indispensable at that time (Guertner, Schwerin-Krosigk) continued for the time being as "non-partisan experts." After an interlude of only a few months, Hitler had finally reached "totality of power," and those who had helped him into the saddle received what they deserved. With irresistible logic, political events headed for the one-party state, as in Russia, Italy, and Turkey, finally established by the law "against the formation of political parties." [1] The reconstruction of dissolved, or formation of new political parties and even attempts at such activities are treated as treason.

Co-ordination (Gleichschaltung) of Public Life

The elimination of political opponents from the civil service and public life in general offered a more difficult problem. Many of them, especially judges and higher administrative officials, could not be replaced at once. An elaborate and intricate legislation, beginning with the now famous law styled by a misnomer "on the restoration of the professional civil service," [2] served two parallel objectives: to eliminate "Non-Aryans"—as Jews were politely called at that time—from the civil service, including the liberal professions, the educational and state-controlled institutions; and to purify the civil service of undesirable members, Socialists, Liberals, or all persons defined in general terms as "politically unreliable." A very large number were dismissed, in many cases without pension; and the statute continued as a weapon against recalcitrants up to 1937, when its main provisions were included in the codification of the civil service on Nazi lines in the Public Official Act.[3] No resistance whatever was offered, the choice for the public official being only "co-ordination" or starvation. By the same devices of pressure, intimidation, coercion, and outright violence, all other fields of public activity, such as press, stage, education, and cultural activities, were brought under Nazi control. Few people could afford to prefer non-conformity to "professional death" by exclusion from the compulsory organizations of all trades and professions. At least in its broad contour the totalitarian state became visible, an ordering of

[1] Law of July 14, 1933 (RGB. I, p. 679).
[2] Law of April 7, 1933 (RGB. I, p. 175).
[3] Law of January 26, 1937 (RGB. I, p. 39). See *infra*, p. 521.

society in which all expressions and activities of private life are subordinated to the tyranny of the State and the party.[1]

The Termination of the Revolution and the "Purge" of June 1934

During the first months of the National Socialist Revolution, full reign was given to the Nazi mob, organized into the strictly militarized Brownshirts and the National Socialist Shop Cell organizations, the spearhead of the regime in plants and factories. The field day allowed to the unemployed proletarian and the student with the party badge meant, in the first place, publicly encouraged violence against Jews (nation-wide boycott of April 1, 1933), against trade-union officials, and in general against all people who had made themselves obnoxious during the past years. On May 2, offices and property of the trade unions were seized under the leadership of Dr. Ley and taken over by the huge Labor organization of the regime, the Labor Front.[2] But in July 1933, Hitler suddenly declared that the Revolution had come to its end. Clearly realizing that continued interference with the normal processes of economic life and public administration could not fail to produce disastrous consequences for the stability of the regime, he announced that business and administration must be left to the experts. High-handed acts of individuals or groups against business other than Jewish discontinued. By this master stroke Hitler allayed the fears of big business that the movement would take a socialist turn.

Yet the regime was headed for a final showdown between the capitalist wing of the party and the "anti-capitalistic yearning" of the rank and file. The economic program of the Government —amateurish, half-hearted, and without definite orientation towards the promised new social stratification—had failed to improve the conditions of the masses. The Left wing, increased by an influx of Communists, embracing the "old fighters," organized in the SA under one of Hitler's oldest friends, Captain Roehm, and the dispossessed lower middle classes felt that Hitler and the party bosses, living in luxury, had "betrayed" the revolution. It is difficult to state with certainty how widespread restlessness and dissatisfaction were. In the twilight zone of intrigues and plotting, of whispering and rumors, evidently an underground

[1] For details of the economic and cultural organization under the so-called "estates," see *infra*, p. 523 ff.

[2] See *infra*, p. 525 ff.

struggle between the bourgeois and the radical sections of the party was under way. It crystallized in the demand of the SA to be incorporated into the Reichswehr, which the latter opposed with determination. Hitler threw in his lot with the army and suddenly acted.

The "purge" of June 30, 1934, together with the Reichstag fire of 1933 and the pogroms of November 1938, belongs to the most spectacular events in the internal history of the Third Reich. Under the pretext that a dangerous conspiracy for the overthrow of the Government was imminent, on June 30 and July 1, 1934, a massacre of high-ranking party officials and other enemies of the regime conveniently linked to the conspiracy took place. It had no parallel in Europe outside Russia since the Paris Commune of 1871. Government by firing squad was successfully introduced in Germany. Private accounts were settled everywhere. The number of persons killed without trial or even the pretext of guilt is estimated conservatively at more than one thousand. Among those brutally murdered or shot were von Schleicher and his wife, Roehm, Gregor Strasser, high Reichswehr officers, Dr. von Kahr, dozens of leading commanders of the SA—the latter without exception more than deserving of their fate—and numerous wholly innocent persons. Von Papen escaped only by protection of friends in the army. That an actual plot against Hitler existed was never proved and is very unlikely.

The "purge," occurring in a land known for its habits of law and order, horrified the world. Its effect on Germany can scarcely be overestimated. The power of the SA was permanently broken and had lost its revolutionary sting. Hitler and the army command had become close allies, from which sprang in due course his domination of the Reichswehr, prerequisite for the future gamble in foreign politics. In divesting himself of the influences of revolutionary socialism, he convinced big business and the high bureaucracy that National Socialism would be national and not socialistic. He proved to friend and foe that he was capable of acting with energy and ruthlessness. If disloyal to his friends who had helped him into power, he was loyal to his people. In his speech before the Reichstag on July 13, 1934, he claimed that he had assumed the powers of the "Supreme Law Lord of the Nation" (*Oberster Gerichtsherr*); freed from all liberalistic concepts of justice, he had saved the State. A Government decree was inscribed in the statute book declaring the acts committed "justified emergency measures." The conscience of the public inside

Germany was so dulled that the massacre enhanced his prestige immensely. Thereafter his undisputed domination over the life and death of his subjects was never challenged. Later plots, however, were given no publicity, but were dealt with in secrecy by the Secret Police and the Star Chamber courts, the only exception being the mysterious attempt at his life—as yet unsolved—in Munich on November 8, 1939.

Death of Hindenburg and the Fusion of Reich Presidency and Chancellorship

On August 1, 1934, at the age of 87, Hindenburg died on his estate in Neudeck, which grim popular humor described as "the one-man concentration camp in Germany." Both personally and politically the old man, probably wholly unconscious of what was going on, had been completely eclipsed by Hitler and his Cabinet. Until his demise, however, the finishing touches could not be applied to the final structure of the Third Reich. Although speculation was ripe as to the person of his successor, Hitler again found the simplest and most logical solution. The Government issued, by way of decree, the Act "on the head of the State of the German Reich." [1] The office of the Reich President was merged with that of the Reich Chancellor; all powers hitherto exercised by the President were conferred on the "Fuehrer" and Reich Chancellor. Hitler could not tolerate constitutional limitations connected with a separate Reich President, even if the incumbent were his puppet. Dictatorship tends to the utmost concentration of powers in the hands of the dictator alone.[2] The army, and subsequently all public officials, took the oath of allegiance to the person of Hitler instead of to an abstract document, such as the Constitution which no longer existed. Hitler himself was henceforward the living Constitution. On August 19, 1934, the German people confirmed the succession by a plebiscite which, however, had merely declaratory character, as the Succession Act had been in force since August 1. In spite of unprecedented propaganda and an election technique discouraging opposition, resentment was so strong that seven out of 45 million

[1] Law of August 1, 1934 (RGB. I, p. 747).

[2] A few days after Hindenburg's death a mysterious document, allegedly embodying his "testament" was discovered under equally mysterious circumstances, according to which Hindenburg nominated Hitler as his successor, a sort of "adoption" well known under Roman Caesarism. The document is designedly omitted in National Socialist textbooks; possibly it was too obvious a forgery of the Propaganda Ministry.

voters registered their protest by negative or invalidated ballots.[1] It was the first and last plebiscite Hitler dared, or cared, to take on internal policies of the regime.

With the fusion of Reich Chancellorship and Reich Presidency, the Third Reich was constitutionally perfected. Modern despotism was normalized in terms of constitutional law.

[1] See *infra*, p. 449 ff.

SECTION II. THE GOVERNMENTAL STRUCTURE OF THE THIRD REICH

CHAPTER XXI. POSITION AND FUNCTION OF THE "FUEHRER"

The Third Reich, a Government Without a Written Constitution

When trying to describe and to appraise a modern dictatorship one has to be on guard against personal bias as well as against the ambiguity and obscurity of the textual material on which the conclusions are based. Political institutions may bear such familiar appellations as "parliament," "plebiscite," "statute," "law," "judge"; but when applied by a dictatorship they are apt to impart connotations widely different from those customary in a democracy. Moreover, legal enactments or official declarations in a democracy usually mean what they try to express; they can be accepted at their face value and in good faith. Contrariwise, in a dictatorship Government statements and statutory enactments frequently are intentionally equivocal or outright dishonest for opportunistic reasons for which dictatorial semantics have coined the all-embracing term "dynamic." Thus the apparent simplicity and straight-forwardness of the dictatorial organization of government is more often than not only the outward cover behind which move immensely complicated power-processes, inaccessible to rationalization by the habitual methods of construction and interpretation. The evaluation of dictatorial politics, therefore, remains at best tentative and of approximate correctness only.

Another serious difficulty in presenting the governmental structure of Hitler's Germany consists in the absence of a written Constitution. Although, in the first years of the regime, plans for formulating the governmental system in the frame of a constitu-

tional instrument were occasionally referred to, it is unlikely that they will ever materialize. By its very nature, dictatorial government defies fixation within the frame of an instrument of government. Even if such a Constitution conferred upon the Leader the most comprehensive powers, the fact alone that they were determined in writing would constitute an intrinsic constitutional limitation inconsistent with the purpose and scope of dictatorial power.

Even without a fixed fundamental charter, the structural organization of the Third Reich presents itself as an all-encompassing and jointless system of constitutional law which is admirably suited for serving the totalitarian ambitions of the regime. Foreign observers, however, must be careful in their interpretation of what constitutional "law" means in a fundamentally "dynamic" pattern of governmental technique. When the will of one mortal man, expressed either in definite commands, statutes, or, more often, vague preferences, and even "hunches," is the supreme law of the land, with no constitutional limitation whatever, the political scientist accustomed to democratic notions of constitutional government may well be inclined to call the "law" of the Third Reich mere legalized arbitrariness—legalized by the sole fact that the man whose will is supreme has at the moment the power to enforce his will.

Hitler, the "Fuehrer"

Presented in a nutshell, all powers of the State and the nation are concentrated in the hands of Adolf Hitler as the "Fuehrer" [1] from whom all powers radiate and in whom all powers converge. The Third Reich resembles a pyramid balanced on its apex. Hitler himself, in many of his addresses, justifies his being endowed with absolute and supreme powers by the fact of his "mission" for the German people, and the achievements—such as destroying the decadent "system" of the Weimar Republic, wiping out the Versailles Treaty, creating "Greater Germany"—he has contributed to German history and to the welfare of the nation. His followers, deeply impressed by the rise of an unknown soldier of the World War to Napoleonic heights as future master of Europe, though equally enthralled by the mythological and irrational notion of his "mission," attribute his achievements as

[1] The term *"Fuehrer,"* an imitation of the Italian "Duce," has idiomatically in German a rather trite, commonplace, and even slightly ludicrous connotation; it is of course alien to German constitutional tradition.

much to his supernatural gifts as to the undefinable though omnipresent qualities of leadership. His book *Mein Kampf,* the Bible of the Third Reich, although somewhat outmoded lately, as well as all his utterances, are expressions of the unchallengeable, infallible, apostolic, and magisterial authority of "the greatest German of all times." It is impossible for the non-believer to argue within the limits of reason with the faithful who believe in these facts with the strength, devotion, and fanaticism of a religious creed. Perhaps one comes closest to an understanding of the singular mental disposition of Hitler himself and of his followers who endorse the political doctrines of the regime without reservation, by evaluating the Third Reich less in terms of political science than of political theology. It is German romanticism and mysticism, encased in a superior psychological technique and raised to the level of a political religion. It is, of course, very difficult to judge how genuine and deep-reaching this irrational foundation of the Third Reich is in reality, or how much of it is attributable to compulsory indoctrination or to an acceptance of the existing situation as a *quid pro quo.* But it may help to explain why, according to National Socialist doctrine, the powers of the "Fuehrer" are limitless, all-embracing, without constitutional or other limitations, and altogether impervious to rationalization.

From here access may be sought to the notion of responsibility said to be inherent in the leadership principle and the qualities of leadership. Hitler never tires of repeating that he is responsible to the people, and that the source of his power is the people and the people alone.[1] But this is merely rhetoric, a lip-service to the democratic ingredients of our modern civilization from which not even a dictatorship can disentangle itself. Factually, the "Fuehrer" is responsible to his conscience alone, and only in an indirect, transcendental sense to the German nation or history. Anyone who would try to translate this mythical responsibility into practice would soon see the executioner's axe over his head.

Supreme Leadership Power (Fuehrergewalt)

National Socialist doctrine pretends to believe in the existence of a mystical energy emanating from the "Fuehrer" which welds together the various activities of the State and fuses State, movement, and people into one inseparable unit. This ultimate and final source of power, called "Supreme Leadership Power" (*Fuehrergewalt*) appears to non-believers rather as an effort to

[1] See *infra,* p. 446 on the relations between "Fuehrer" and nation (*Volk*).

legalize the spell or magnetism ascribed to Hitler than as a moral justification of sovereignty of the kind inherent, for example, in monarchical rule "by the grace of God." This is in fact the core of the political theory of the regime, constantly quoted and referred to, the closest approach to constitutional deification of a mortal being. It is, in short, secularized theology. Hitler is considered absolutely sovereign; nothing is beyond his jurisdiction or, for that matter, beyond his intellectual or moral capabilities. He embodies unity of will and command. State and leader cannot be separated, because he is the State and the State is the product and object of his will. From this theoretical conception—of fundamental importance in practical politics—it is clear that there can be no room in the Third Reich for the customary pluralism of State functions, elaborated as the separation of powers by Locke, Montesquieu, and modern constitutionalism.

Moreover, the "Fuehrer" integrates, and therefore is in supreme control of the tripartite division in "people" (*Volk*), "movement" (*Bewegung*), and "State" (*Staat*)—one of the basic and recurrent slogans of the doctrine. From this trinity are derived more concretely his powers as symbol and idol of the people, as leader of the National Socialist Party, and as holder of the highest offices of the State and the Government as Reich President and Reich Chancellor. He exercises all powers attributed individually to each of these institutions. Residues of the origin of his powers are still visible in the technical arrangement for the discharge of his functions, for which he has three different bureaus or staffs; namely, the President's Chancellery operated by Dr. Meissner, a former Liberal who had served Ebert and Hindenburg in this capacity with equally unflinching loyalty; the Reichs Chancellery (headed by Dr. H. H. Lammers, now a Minister without portfolio and an uncommonly able official of the old civil service), and finally the Chancellery of the party, the Headquarters of the NSDAP. Although powers and functions of the "Fuehrer" are "indivisible and inseparable," for technical reasons three different bureaus are serving the "Fuehrer."

As mentioned before, Hitler fused, after Hindenburg's death, the office of the Reich President with that of the Reich Chancellor. At the same time he decreed [1] that in official and unofficial contacts the title "Reich President" should be omitted; he was to be addressed as "Fuehrer and Reich Chancellor." In July 1939

[1] By Edict (*Erlass*) of the Reich Chancellor of August 2, 1934 (RGB. I, p. 747).

he dropped also the title of "Reich Chancellor," to be referred to henceforward simply as "Der Fuehrer."

Origin and Termination of the Office of the "Fuehrer"

The position of Hitler as "Fuehrer" is grounded, if one tries to understand it in terms of constitutional law, in his appointment by Hindenburg to the office of Reich Chancellor; in the Enabling Acts of 1933, 1937, and 1939, which extended his powers to 1943 for the time being; and finally in the autocratic assumption of the Reich Presidency in 1934. Factually he is "Fuehrer" of the German people for life, although this is nowhere mentioned in so many words in a legal document. He is neither successor to Hindenburg nor successor to the Chancellors of the Republic. He was given to his people by an inscrutable act of Providence. Termination of his functions is possible only by voluntary resignation, death, or revolution. He may appoint a Deputy-Leader.[1] For a long time, no Deputy-Leader was chosen, possibly because such an appointment might give to the holder a claim or title to the succession of Hitler, Rudolf Hess being only Deputy-Leader of the NSDAP. The National Socialist doctrine held that, as an unwritten maxim of constitutional law, the future leader of the party will succeed Hitler as "Fuehrer." It was only after the invasion of Poland by the German armies had begun, on September 1, 1939, that Hitler, about to leave for the "front" as the "First Soldier of the Reich," made known his intentions as to the person of his successor.[2]

Hitler's Actual Participation in Government

Very little is known about the actual exercise of these absolute powers by Hitler. In what, precisely, does this elusive element of leadership consist? Evidently Hitler's activities have little in common with the routine functions of government. It is certain that he is not at all interested in matters of civil administration. His capricious living habits, of which a good deal is known, seem to indicate that he is as incapable of desk work as his predecessor, Kaiser Wilhelm II. His main interest, besides hobbies such as

[1] Succession Act of August 1, 1934; paragraph 1, sentence 2.

[2] It should be noted that the question of succession is no longer to be answered only by historical experience, which seems to indicate that no dictatorial regime has survived its founder. The technique of the one-party state has changed the situation considerably, and a number of contemporary dictatorships were continued after the exit of their founders (Russia, Poland, Turkey, and Austria). See *infra*, p. 555.

architecture, movies and music,[1] is foreign policy, in accordance with his conviction of his "mission" to make Germany a world power. In this capacity he has certainly developed rather unique abilities; some people speak of his "sixth sense" in explaining his uncanny talent of timing and calculating his moves on the psychology of his opponents. As far as can be ascertained at present when the second World War seems still remote from its decisive phase, he knew how to utilize these talents—more the mark of a politician than of a statesman—for the exigencies of war strategy. The onslaught on Poland, a safe move when appraised only in terms of military calculations, was as perfectly executed as the invasion of Scandinavia was bold and original beyond comparison. For one who gains satisfaction from historical parallels it appears that Hitler's tactical moves in his fight against Weimar and in consolidating his hold after the seizure of power are repeated on the more exalted—and decidedly more dangerous—level of high strategy in the bid for world power. Be that as it may—our sources are altogether inadequate—even Adolf Hitler must be accessible to human influences, as all human beings are, although he may be impervious to advice. It is exactly this incalculable element of human influences and power relations which makes dictatorship, in spite of the striking simplicity of its structural arrangements, the most complicated and irrational form of government.

[1] Occasionally the melodramatic style of the Wagnerian operas is related to the melodramatic conduct of politics in the Third Reich by Hitler. This is perhaps a better approach than the rather unfortunate application to National Socialism of pseudo-scientific terms borrowed from Freudian psychoanalysis. The "Fuehrer" used frequently to attend the operas of Wagner. It seems, however, that lately he preferred the lighter vein of "The Merry Widow" and of American dancers to the heavier nourishment of the Wagnerian music drama.

CHAPTER XXII. THE REICH CABINET (REICHSREGIERUNG)

Even the Superman and Godlike "Fuehrer" is unable to perform alone all functions emanating from "Supreme Leadership Power" when he tries to translate inspired planning for the future into realities. He needs agents, servants, collaborators, and executors of his will. This task is performed, among others, by the Reich Cabinet or Reich Government, composed of the Reich Ministers.

Position of the Cabinet

The members of the Cabinet are without exception the personal confidants of the "Fuehrer." Here the universal assumption that the "Fuehrer" and his people are joined together by the same spiritual bond of fealty and devotion which existed historically between the "Lord" and his "retainers" or "followers," is intensified in that the members of the Cabinet are said to be imbued with a fanatical devotion to the person and the mission of the "Fuehrer." They are responsible to him, and to him alone, since ministerial responsibility, with the abolition of the government-controlling functions of the parliament, has changed its meaning. Interdependence is reflected in the institution of the co-signature (*Mitzeichnung*), by which the individual Minister, in adding his signature to that of Hitler on a Government decree, assumes personal responsibility towards Hitler. In their relations towards the "Fuehrer," the members of the Cabinet are his subordinates, not the colleagues of the Reich Chancellor as under the Weimar Constitution. The frame of co-operation established in the Third Reich is reminiscent of the monocratic organization of the government under the Bismarckian Constitution, revealing again the force of traditional trends in German political life. On the other hand, the Ministers, described by the National Socialist doctrine as "genuine subleaders," are independent within the fields of their assigned jurisdiction. They act

on their own responsibility, subject only to the ultimate responsibility towards the "Fuehrer." He appoints, dismisses, instructs, and directs the members of the Government at his discretion. Cabinet meetings have become rare. The irregular private life of the "Fuehrer" does not permit them. Consultation between Hitler and his Ministers takes mostly the form of audiences granted in Berlin or at his mountain retreat on the Obersalzberg. Majority decisions of the Cabinet no longer exist, differences of opinion being decided by the "Fuehrer." Within the Cabinet, the opinions and decisions of the Deputy-Leader of the party, Hess, are considered as second in importance only to those of the "Fuehrer" himself.

The Reich Cabinet in Operation

In accordance with the specific needs of the regime and the transformation of the Reich into a unitary state,[1] several new Ministries were created; namely, that for Propaganda and Public Enlightenment (1933), Air (1933), Church Affairs (1934), and Science and Education (1934). The Ministry of Economics and Agriculture was separated into two offices (1933). At present [2] there are fifteen Ministries: (1) Interior (Frick); (2) Foreign Affairs (von Ribbentrop); (3) Air (Field Marshal Goering); he is at the same time Minister President of Prussia and, since the reorganization of the economic apparatus of Germany necessitated in December, 1939, by war and blockade, also Supreme Director of War Economics; (4) Finance (von Schwerin-Krosigk); (5) Economics (Funk); (6) Propaganda and Public Enlightenment (Goebbels); (7) Justice (Guertner); (8) Nutrition and Agriculture (Darré); (9) Labor (Seldte); (10) Science and Education (Rust); (11) Church Affairs (Kerrl); (12) Post (Ohnesorge); (13) Communications (Dorpmueller); (14) Defense (General Keitel); [3] (15) Arms and Munitions (Todt); the latter Ministry was created in March 1940.

In addition, the Cabinet embraces at present six Ministers

[1] See *infra*, p. 453 ff.

[2] May 1940.

[3] Sticklers in legal terminology may argue that, after the shake-up in the Army Command in February, 1938, preceding the invasion of Austria, a Ministry of Defense does no longer exist, and that the position of General Keitel is not equivalent to that of previous Ministers of Defense. It is true that Keitel was appointed officially "Chief of the Command of the Armed Forces"; but the functions of the Ministry of Defense are carried on under his responsibility and he has, by virtue of his office, a seat in the Cabinet. After the outbreak of the war a general shift in jurisdiction between Supreme Command of the Army and the routine administration of the military establishment took place the details of which, under war conditions, are, for obvious reasons, not yet ascertainable in this country.

without portfolio, namely: (1) Hess, Deputy-Leader of the NSDAP; (2) Frank, as Commissioner of Justice for the reform of the legal system in the spirit of National Socialism, and appointed, in September, 1939, Governor-General as head of the civilian administration of the conquered territories of Poland; (3) Lammers, as head of the Bureau of the Reich Chancellery; (4) Meissner, as head of the Reich President's Office; (5) Schacht, who remained a titular member of the Reich Cabinet after his demotion from the Economics Ministry and the Presidency of the Reichsbank; finally (6) von Seyss-Inquart, former closest friend of the hapless Austrian Chancellor Schuschnigg.[1] Membership of the Chief of Staff of the SA in the Cabinet was abolished after the assassination of Roehm in the purge of June 1934. Other high officials participate in deliberations of the Cabinet if their sphere of jurisdiction is involved.[2]

A survey of the Government's personnel reveals the striking fact that in seven years of power no more than twenty men have held office in fifteen regular departments. Nine departments are still presided over by the same men who obtained the positions at the beginning, a record equaled by no other contemporary state.[3] All members of the Reich Government, since the enforced resignation of Hugenberg in June 1933, are members of the Nazi party, those originally not belonging to the party having been appointed "honorary members." Only a few of the Ministers have had previous training in government service or administration; [4] all others are men with tested party loyalty instead of

[1] After the resignation of Schuschnigg Seyss-Inquart was, for a very short while, Austrian Federal Chancellor, then Reich Regent for the *Ostmark* (formerly Austria); after the abolition of this office he was raised, in May, 1939, to the position of Minister without portfolio; later reports referred to him as second-in-command of the civilian administration of the conquered territories of Poland. In May, 1940, he became Commissioner of the civilian administration of the conquered Netherlands.

[2] The Leader of the SS and Commander of Police Himmler, whom many consider the most powerful man of the regime; the Reich Labor Leader Ley, controlling the Labor Front; the head of the Foreign Division (*Auslandsorganisation*) Bohle; and the Prussian Minister of Finance, the only Prussian office which at present is not conducted in personal union with the corresponding Reich office. The office of the Reich Vice-Chancellor, held by von Papen till the purge of June 1934, has not been revived.

[3] The greatest turn-over is shown in the Ministry of Economics, which was held by four men (Hugenberg, Schmitt, Schacht, and Funk). Changes took place also in the Foreign Affairs Ministry (Ribbentrop in the place of von Neurath, now "Protector" of Bohemia and Moravia); Defense (in which von Blomberg was succeeded by Keitel [February, 1938] in the shakeup preceding the invasion of Austria). Only two men (Schmitt and Elz von Ruebenach, a Catholic) were permitted to resign voluntarily; Roehm was assassinated; von Papen was demoted after the purge.

[4] Von Neurath, Frick, Lammers, Dorpmueller, von Schwerin-Krosigk, Schacht, Guertner, and the generals serving in the Defense Ministry.

expert qualifications for service. All the key-positions are held by so-called "old fighters," seasoned in the struggle for power.

It would be surprising indeed if a nation forever laboring under a shortage of able leaders had suddenly produced a large number of top-ranking men. It should not be overlooked that endless complaints are reported about the lack of definite jurisdiction; overlapping of competence and functions; red tape; waste of money and energy; jealousy and intrigues between the departments and the men heading them, all entangled in a ruthless competition for the favor of the master; and clandestine maneuvers carried on in the antechamber instead of through regular and orderly constitutional processes. Yet no unbiased observer can deny that the regime, under this rather haphazard organization at the top, has accomplished momentous tasks which, at least in the light of Nazi eulogies, have no parallel in any other contemporary government. Whatever one may think of the aims of National Socialism, or of the methods by which they are to be attained, it can scarcely be denied that among the "Twelve Apostles" of the modern German Messiah there are men of unusual ability as organizers, administrators, and executives. Space forbids a discussion of the personalities of Hitler's collaborators in the Reich Government, tempting as it is to portray some of them. Men like the colorful Goering—certainly a much more powerful mind than one is inclined to admit on the basis of the current jokes about him, many of which are manufactured in the Propaganda-Ministry—, or the efficient bureaucrat Frick, the flamboyant Ley, the versatile Schacht, or Goebbels with his ice-cold intellectuality and disdain of human values, cannot be appraised unbiasedly for the time being. Moreover, one may well doubt, in view of the absence of objective evidence, whether the vision of the men in control counts for more than the traditional adaptability and skill of the trained bureaucracy under a regime whose apparent success may be nothing more than the complete lack of moral inhibitions. But the fact remains that the much prophesied collapse of the administrative and economic machinery of Germany failed to materialize; not only could a modern state, under conditions so difficult as they were from the beginning, be kept running by a group of rank amateurs but the regime was able to prepare itself, by a supreme effort of its leaders, for the ultimate test of war. This may have come as a surprise to many in "diploma-minded" Germany; it may even have come as a shock to those who were in the habit of extolling the selective qualities

of the civil service or of the parliamentary system which, in our time, seemingly is able only to produce political mediocrities. Be that as it may, the successes of the regime to date were made possible only by the governmental technique of despotism, under the dynamic will power of an exceptional personality. Whether the Reich Government is a privileged oligarchy operating under an exemplary team spirit, or a "gang" which derives its apparent cohesion from a common fear of the day of reckoning, matters little in evaluating so extraordinary a political phenomenon.

CHAPTER XXIII. THE FUNCTIONS OF THE REICH GOVERNMENT

Concentration Instead of Separation of Powers

The "Fuehrer," together with his subordinates in the Cabinet, constitutes a new political entity, called *Reichsleitung*. It embraces, concentrated in the hands of one group under Hitler, the sum-total of all executive, legislative, administrative, and, if need be, also judicial functions, which are still assigned to different agencies of the State merely for practical reasons. Conduct of policies in their entirety is left to the "Fuehrer," for whom the customary division of labor among the various Ministries is only a technical device; at any time he may assign special tasks to the heads of the departments.

Only for the sake of a convenient survey, therefore, may the powers of the "Fuehrer" be grouped along the following lines: he exercises all powers which belonged formerly to the President of the Republic, including the Supreme Command of the armed forces; the power to dissolve the Reichstag; to appoint and dismiss the Reich Ministers and officials; the privilege of mercy, extended now to the power of quashing pending criminal proceedings; the power to remodel government agencies and departments (called *Organisationshoheit*). Finally, the power to represent the Reich internationally has been extended to the supreme conduct of foreign affairs and occupied from the outset the center of Hitler's personal activities.

In the second place, the "Fuehrer" exercises new powers derived from the organic acts of the regime itself, such as the appointment and dismissal of the governors of the Laender (Reich Regents) and the ministers and public officials serving in the Laender as Reich officials.[1] Together with his collaborators in the Cabinet, he issues Government decrees as the main type of legislation in the Third Reich, which may even contain new

[1] See *infra*, p. 454 ff.

constitutional law. He controls, directs, and supervises the entire administration of Reich and Laender.

Finally, the "Fuehrer" is endowed with those powers which spring from the National Socialist mythology, in particular from the function of being the leader of the National Socialist Party. Although, during the last years, the position of the party in the state has been regularized to a large extent by incorporating the party into the State,[1] a good many of these powers of the "Fuehrer," by virtue of their theological or mystical implications, are incapable of being integrated by definable institutions or legislative arrangements. Though they defy adequate translation into terms intelligible to non-believers, they may be summarized as follows: The "Fuehrer" is "the bearer of the legal will of the racial community," and, as such, the ultimate source and justification of legislation and policies. Since he is, in addition, "addressee of the duty of fealty" (*Treupflicht*), all "racial comrades" are under the moral and legal obligation to be loyal to him and his "mission" for the German people. All are responsible to him, while he is responsible to nobody except his conscience and his "mission."

This summary of the "Fuehrer's" position may be supplemented by further elaboration to show how some of these powers are exercised in actual practice.

(*1*) *Legislation*

(*a*) *Ordinary Legislation.* Legislation, though remaining the fundamental manifestation of government, is in the Leadership-State the expression of the will of the Leader who monopolizes the will of the State and expresses the wishes of the people. Under the Third Reich, three types of legislation are theoretically recognized: (a) statutes passed by the Reichstag in conformity with the Weimar Constitution, thus far not repealed; (b) statutes accepted by the people by way of plebiscite; [2] (c) statutes enacted by way of a Government decree by the Reich Government (*Regierungsgesetz*) according to the Enabling Act of March 24, 1933. In practice, only the Reich Government legislates.[3] Legislative initiative belongs exclusively to the Reich Cabinet. The people do not participate in the process of legislation except when

[1] See *infra*, p. 467 ff.

[2] See Law on plebiscites of July 13, 1933 (RGB. I, p. 479).

[3] On the statutes passed by the Reichstag see *infra*, p. 449, note 1, the only statute submitted merely for confirmation to the people by plebiscite was the Succession Act of August 1, 1934.

called on by the Government in the plebiscite procedure. Attempts to initiate legislation from below would be punished as treason. The Cabinet drafts legislation by Government decree and submits it to the "Fuehrer." His decision creates the law.

(b) Legislation Amending the "Constitution." The customary distinction between ordinary legislation and constitutional amendment no longer exists. The Enabling Act of March 24, 1933, had empowered the Reich Government to amend the Weimar Constitution by Government decree, with the sole restriction that the "institutions" of the Reichstag and the Federal Council and the powers of the Reich President (Article 2, sentences 1 and 2) must be kept intact. By the Reconstruction Act, the second of the "organic" statutes of the new regime,[1] a new Reichstag, elected in November 1933 on the one-party ticket of the National Socialist Party, unanimously conferred upon the Cabinet the plenitude of the amending power without any limitations, thus demolishing the last residues of the constitutional guarantees of the Enabling Act. Article 4 declares in unequivocal terms: "The Government of the Reich may enact new constitutional law." Henceforward the amending process became identical with the ordinary legislative procedure, both being exercised by simple Government decree.

(2) *Conduct of Foreign Policy*

Authoritarian government is incompatible also with participation of the people or their representatives in the conduct of foreign affairs. The elaborate provisions of the Weimar Constitution which tried to guarantee to the people a share in the shaping of their destiny were thrown overboard by the regime. The "Fuehrer" alone makes all decisions referring to foreign relations. He negotiates and concludes treaties and alliances, and he denounces them according to his discretion. Hitler conducts foreign relations by way of personal negotiations with foreign statesmen who call on him, or through his confidant Ribbentrop, or through the regular channels of the completely co-ordinated diplomatic personnel, and frequently also through personal emissaries fulfilling special tasks under instructions of the "Fuehrer." Moreover, Hitler is the master over war and peace.[2] Thus one man alone,

[1] *Gesetz über den Neuaufbau des Reichs,* of January 30, 1934 (RGB. I, p. 75).

[2] It is true that the provision of Art. 45, *alinea* 2, of the Weimar Constitution: "Declaration of war and conclusion of peace are dependent on the passing of a statute of the Reich" was not formally abolished. In attacking Poland Hitler jumped easily over this legal hurdle. On September 1, 1939, that is on the morning

trusting his mission, or his stars, or the "voices" guiding him, has power over life and death in our civilization. This fact, more than anything else, reveals the danger of one-man government without constitutional limitations. In the eyes of his followers and many Germans otherwise not fully endorsing the regime, Hitler has justified such paramount powers by his achievements as "aggrandizer" of the realm and creator of "Greater Germany."

(3) Supreme Command of the Armed Forces

Ascendancy of the political leadership of the Government over the army was the touchstone of political power in the German past. Parliamentary control of the military establishment, though one of the main objectives of liberal constitutionalism under the Weimar Republic, was never fully accomplished. Here Hitler put the clock back even far behind the time of Bismarck. Following on the heels of the old Field Marshal's death, the army, officers and men, took the oath of loyalty to the person of Hitler himself, to whom the powers of the Reich President as Supreme Commander of the armed forces had passed by the Succession Act. At least formally, the army is bound again in allegiance to the person of the "Fuehrer" as it was bound to the person of the monarch in the dynastic period. In 1935, by the Law "on the structure of the armed forces," [1] the first open blow against Versailles, and by the subsequent Army Act,[2] Hitler made himself Supreme Commander of the Armed Forces (*Oberster Befehlshaber der Wehrmacht*). Under his instructions the command was exercised by the Chief of the Command of the armed forces. In turn, the latter is the superior officer of the three branches of the army, the navy, and the air force.

This arrangement of the powers of military command, envisaged for peacetime, seems to have been transformed, with the outbreak of the war, into an even more direct and intimate relationship between Hitler, as the "Supreme War Lord" in the fullest sense of the term, and the highest military Commander-in-Chief, General von Brauchitsch. As yet it is not altogether clear which relations exist between Hitler, the Supreme Army Command, and General Keitel, the latter, evidently, as a sort of

his armies had invaded the Polish frontiers, he called a meeting of the Reichstag which jubilantly endorsed his decision. Moreover, since the war against Poland was officially considered only as a "punitive" or "police" expedition, a formal declaration of war was dispensed with. Nor was there a formal declaration of war against Norway, or any of the subsequent victims of German aggression.

[1] *Gesetz über den Aufbau der Wehrmacht,* of March 6, 1935 (RGB. I, p. 375).

[2] *Wehrgesetz,* of May 21, 1935 (RGB. I, p. 609).

Hitler's personal Chief of Staff being the *amanuensis* of the "Fuehrer" in all military matters. Though definite evidence is lacking, it is more likely than not that the "Fuehrer," the *çi-devant* corporal in the World War, now takes an active hand both in shaping the general military strategy of the war and in influencing specific tactical moves. At any rate, his is the ultimate responsibility in all strategic decisions on land, on the sea and in the air. It is reliably reported that high ranking army commanders refused to act unless authorized by a command written by Hitler himself, and even Goering is said to have insisted on an order written by Hitler's own hand for the expected attack on the civilian centers of the British Isles.

To have bent the army command to his will and to have coordinated, even without complete Nazification of the higher ranks, this most effective instrument of power is perhaps one of the most conspicuous achievements of Hitler, all the more striking since the army, pillar of German national tradition and perhaps the most original expression of national corporate spirit, has tenaciously resisted full integration in, and absorption by, National Socialism. This is for various reasons. In the first place, the army, in view of its social structure, resented infiltration of partisans without education in the Prussian military spirit; the corps of officers was recruited, under the Republic, mostly from the formerly ruling classes of the nobility and higher bourgeoisie, the rank and file from the conservative peasant stock. In the second place, the leading army generals refused to make the *Reichswehr,* successfully entrenched under the Republic in "neutrality" towards party politics, an instrument of party politics of the National Socialist flavor. Finally, the trained technicians in the army command feared, perhaps justly, the spirit of the adventurers and gamblers they believed to be in control of the State. When the *Reichswehr* command stood behind Hitler in the purge of June 30, 1934, it was as much a victory of the army over the party as of Hitler over the allegedly impending "Second Revolution."

And yet the generals were won over to Hitler's bold strategy, which leads Germany on the path to world power. Until the fateful summer of 1939, Hitler proved right in calculating on the apathy and disunity of the French and English governments. The army leaders objected to the planned occupation of the demilitarized zone of the Rhineland in March 1936. The change in the High Command prior to the invasion of Austria (Febru-

ary 1938), accomplished smoothly though with discreet help by the Secret Police, was the prelude to the annexation of Austria (March 1938), another striking success of the "Fuehrer" in challenging Europe with impunity. Hereafter no resistance by the army generals against his supremacy in shaping political decisions was recorded. Hitler was able to crown his efforts to make the army an instrument of Nazi politics by breaking down the social aloofness of the officers corps from the party.[1]

Effective co-ordination of the armed forces with the aims of the Third Reich may have disappointed many who counted, more in wishful thinking than on the basis of realities, on the eventual conflict between army command and political leadership of the party. Besides the fact that the army has always unflinchingly supported the powers that be, militarization of the entire nation brought for the army unparalleled ascendancy. Never before (the World War not excepted) has the army been so completely in control of civilian life as today. Through Hitler's political and diplomatic accomplishments the army has received more than its due in promotion, influence, and fully restored social prestige.

For those who had followed with realistic attention the relations between the regime and the military leaders, it was, therefore, no surprise that the army command, once Hitler's diplomacy had dispelled the nightmare of another war on two fronts, threw itself into the conduct of the war with traditional loyalty.[2] For the customary efficiency of the German military machine testified the brilliant campaign in Poland, in which the fifth strongest military power in Europe was finished off within less than one month. No less striking from the viewpoint of strategic originality and tactical skill was the conquest of Norway although the methods applied—treachery and ruse—are utterly alien to the traditions of the once proud General Staff and bear visibly the mark of Hitler's peculiar political technique. Even one who is not easily impressed by military accomplishments cannot fail to accord the highest honors of politico-military ingenuity to the campaign against the Allies which stunned the world. In less than two

[1] The plan announced in January 1939 envisaged pre- and post-service training of all able-bodied men by Storm Troopers of the SA. It amounted in practice to indoctrination of the officers on reserve with Nazi spirit.

[2] The mysterious death of General von Fritsch, allegedly killed in action before Warsaw, appears more as a confirmation of than a contradiction to the general attitude of the army commanders. Von Fritsch, prior to his dismissal in connection with the army shake-up preceding the annexation of Austria, was considered as the ranking strategist of the General Staff.

months Holland and Belgium—unprepared as they were, in the futile belief in Hitler's frequent protestations of neutrality towards them—were overrun; the British Expeditionary Corps was ejected from the Continent, and France was utterly vanquished, that France whose army and "impregnable" fortifications had been considered by experts as the top-ranking military establishment of our time. Hitler himself is credited with having planned the strategy of military operations and with having devised also the major phases of tactical execution.

It appears that what was believed to be an inexorable law of warfare has been halted. Formerly, a general victorious on the battlefield could prove himself a more formidable competitor for popular acclaim than all political satraps and henchmen together. In this war the army leaders, though on rare occasions mentioned by name in the official war bulletins, act more or less as an anonymous group wholly overshadowed by the "Fuehrer," whom his propaganda machine keeps constantly in the limelight. The German General Staff, some of the older members of which may continue to feel themselves beyond the pale of Nazi indoctrination, has become as subservient an instrument of Hitler's paramount leadership as all the other agencies of the Third Reich. No doubt that the Praetorian guard of the regime, the SS under Himmler, by now a full-sized army itself, has not relaxed nor will it relax in its close watch over the masses mobilized as armies, and over the corps of officers. All predictions of a crucial conflict, if the layman in political control should arrogate to himself decisive influence on the actual conduct of the war, were swept aside by the unprecedented successes in preparing for the war and in leading it within reach of final victory. No comfort, therefore, could be derived from the pious hope, entertained at first by deluded British circles, that the army will take over the reins of Government and steer towards a liberal regime once "Hitlerism has been destroyed." The German generals may be justly credited with being first-rate technicians in their limited military field, but by virtue of their training and social background they lack forever understanding of politics and of political necessities. In the past Germany had few if any soldiers qualified for political leadership.

CHAPTER XXIV. POLITICAL MANIFESTATIONS OF THE PEOPLE

The Third Reich as an "Ennobled" Democracy

National Socialist doctrine has devoted much pains to proving, both for home consumption and for the world at large, that the Third Reich is a democracy, and an "ennobled" democracy at that. Nothing is more resented than the slur of being called a dictatorship or an autocracy. Through its most prominent spokesmen the regime describes itself as a *"volksgeführte Demokratie."* That is: Everything for the people, nothing by the people, and nothing through the people. Although such assertions imply a high tribute to the idea of democracy, it sounds perplexing to foreign observers who are struck by its profoundly anti-democratic and authoritarian character. Reconciliation of the democratic idea and the leadership principle is accomplished by a quaint perversion of the term "democracy" and its adjustment to the semantics of National Socialism. In brief, the people —*Volk*—are no longer the pluralistic aggregate of the inhabitants of the territory, nor the people organized politically as the electorate under the liberal doctrine, but something permanent, supernatural, a mystical entity; real, beyond the existing totality of all inhabitants, the *Volk* has an "objective existence," different from and irrespective of accidental subjective trends and volitions of the people living today or at a given moment in history. It cannot be seen; it can only be felt or believed. Only the "Fuehrer," by virtue of his supernatural qualities and the intrinsic strength of his "mission," is able and qualified to express the real or "objective" will of the people. Since there must be complete identity between the will of the "Fuehrer" and the will of the people, the people's will is considered erroneous and invalid if it fails to coincide with the "Fuehrer's" will. As the people do not know how to decide, the "Fuehrer" decides for them. The doctrine exerts itself in elaborating that the "Fuehrer's" motives in epitomizing the real "consciousness of the

people" are never selfish, arbitrary, or subjective. He reveals to the people their subconscious will. He "incarnates" the nation. Hence Germany is a genuine democracy. If, therefore, unanimity of popular manifestations emerges from elections and plebiscites, it is only the proof of the identity of the will of the "Fuehrer" and his people. Force, of course, has no place in producing the unanimity of the popular adhesion to the "Fuehrer's" will, at least according to the doctrine of the regime. These deductions reveal once more National Socialism as a political religion, and the governmental system of the Third Reich as a secularized theology. One is struck by the blasphemous resemblance of such doctrines of deification to the Christian gospel. Deification of the leader, for the sake of making dictatorship palatable to the people as "ennobled" democracy, is certainly as much a postulate as a practical necessity upon which the regime stands or falls.

The Reichstag

Be that as it may, the foregoing elucidation of the National Socialist concept of democracy guards against ascribing to electoral processes in the Third Reich any of the implications commonly connected with them in genuinely democratic states. Elections arranged by the regime serve merely as manifestations of the homogeneity of the "Fuehrer's" and the people's political will.

Consequently, in a state under the leadership principle the parliament ceases to be an independent organ of legislation. The Reichstag has become an instrument of dictatorship destined, in the main, to serve as a mouthpiece or sounding board for official declarations on the part of the "Fuehrer." No discussion is demanded, expected, or permitted.[1] An assemblage of party appointees listens silently or clamorously, as the case may be, to the declarations of the "Fuehrer" and unanimously ratifies, in military obedience to the command, the bills submitted by him on rare occasions.[2]

Universal, equal, secret, and direct suffrage as of the Republic is nominally still in force. Voters are all Germans of the age of 20 or over, if they are of German or "of racially similar blood." [3]

[1] Even the Standing Orders have been canceled; the President of the Reichstag, the ubiquitous Herr Goering, was empowered to handle the procedure according to his discretion. He dispensed with the three "readings" of the bill.

[2] The Reichstag meets when convened in the old Kroll opera house. The interior of the Reichstag building proper has not been restored since the fire; it is preserved as a visible sign of Bolshevik "destructiveness."

[3] Law of March 7, 1936 (RGB. I, p. 133).

Jews and Jewish "mixed offspring" [1] are excluded from voting; for members of the armed forces the suffrage is in abeyance. Under the system of proportional representation inherited from Weimar, one deputy for every 60,000 voters is provided. To Germans living abroad free transportation home or the hospitality of German ships has been offered for voting on the high seas. To the existing 35 electoral districts new ones were added after the annexation of Austria and the Sudetenland. German nationals living in the Protectorate of Bohemia and Moravia are also entitled to vote; in the meantime Hitler, without going through the motions of an election, has appointed their representatives from among deserving party dignitaries.

Political pressure of the party has in fact introduced compulsory voting. Registration reaches the highest degree of accuracy. Absence from the polls is officially considered opposition to the regime and dealt with accordingly. Participation in the poll is exceedingly high, and comes close to 100%. Consequently the number of deputies rose from 661 in November 1933 to 813 in April 1938.

Since the enforced dissolution of all other political parties, the NSDAP has the monopoly of running candidates in an election. The selection of party candidates is left exclusively to the discretion of the National Party Manager, who happens to be Minister of the Interior, in collaboration with Reich leaders of the NSDAP and the district party leaders. Almost all members of the Reichstag are party members; a hand-picked number of non-partisans [2] join the party as "guests." The names of the candidates are not known to the voter beforehand; in fact he would be little interested in them. He is presented with a ticket of the party, headed by Adolf Hitler, and marks it "Yes," as told by propaganda and party officials "assisting" him at the polling station. For once, one agrees with the doctrine which describes the situation neatly thus: "The Reichstag is today a representation proposed by the NSDAP and confirmed by the people through plebiscite."

The Reichstag in Action

The Reichstag is summoned only rarely. Altogether, less than fifteen meetings within some seven years have taken place. Votes are taken by "acclamation," that is, by silent acceptance or by the members standing up. Committees no longer operate. Yet the 813

[1] On these novel and bewildering terms see *infra*, p. 504.
[2] At the election of March 29, 1936, 18 among 741.

deputies, most of whom hold other lucrative offices in party and State, draw their regular monthly salary of six hundred marks ($240 at par). Legislative activity is even less than the number of meetings would indicate. Only seven acts have been passed by the Reichstag.[1] The many hundreds of other statutes marking the rather hectic legislation of recent years have been passed by Government decree.

In spite of its rubber-stamp character, the Reichstag has been dissolved by Hitler and re-elected no less than four times within seven years. The first election occurred on March 5, 1933, the last opportunity for the various parties to participate. The second election, in the same year on November 12, served as a demonstration of national unity when Germany left the League of Nations, while incidentally ridding the Government of the slender restrictions of the Enabling Act. The third election, on March 29, 1936, followed the breach of the Locarno Treaty by remilitarization of the Rhineland. The fourth election, of April 10, 1938, ratified both in Austria and in Germany the annexation of Austria.[2] Dissolutions and elections are considered acts of "political mobilization"; they serve the welcome purpose of self-glorification, emotional excitement, and propaganda stagecraft which are the elixir of a "dynamic" regime. The occasion is always a well-chosen point of foreign policy in which the regime can count on support even from the dissenters, and it is duly exploited also for advertising "complete homogeneity of Fuehrer and people" in internal policies. The German taxpayer values this loudspeaker arrangement at about ten million marks a year.

Election statistics are of little value and therefore of little interest. The percentage of "yes" votes in the higher brackets of 90 is a foregone conclusion. Only in the first election of November 1933 and in the only plebiscite on internal policies (on the assumption of the powers of the Reich President by Hitler on August 19, 1934) was opposition reflected in considerable minorities through "no" votes, invalidated ballot papers, and by abstentions which at that time could still be practiced on a large scale.[3]

[1] Enabling Act of 1933; Continuation Acts of 1937 and 1939; Reconstruction Act of January 30, 1934 (RGB. I, p. 75), incidentally the only bill which was initiated, at the request of the government, by the Reich Regents and Minister Presidents of the *Laender* who were members of the Reichstag; and the three so-called Nuremberg Acts of September 16, 1935 (RGB. I, pp. 1146, 1147). See *infra*, p. 504.

[2] Elections for the Sudetenland took place on December 5, 1938; 98.9% of the voters endorsed the only presented ticket of the NSDAP.

[3] On the election process, see *infra*, p. 451.

Plebiscites

Elections for the Reichstag are no longer free decisions on the persons of the representatives; they are plebiscites for (or, theoretically, against) the regime; the customary distinction between a vote for an assembly and the popular decision on a factual issue is obliterated. Yet, in addition, the Third Reich possesses a regular method of plebiscite (*Volksbefragung*) proper. It is also a signification of the "true," "unadulterated," and "ennobled" democracy. Its only purpose is that of demonstrating to the German people, and possibly to the world, unanimous endorsement of the Governmental policy and implicitly of the regime at large. By no means do such plebiscites confer upon the people the right to decide issues. A plebiscite under the Third Reich is not a legislative act, although the Plebiscite Act of 1933 [1] states that "plebiscites may be taken also on statutes." The Government may ask the people whether or not they consent to a measure "intended" by the Government. Although the act prescribes that the plebiscite ought to precede the measure, thus far all three plebiscites have been held after the step in question was taken. An adverse vote was automatically precluded. Only afterwards do the voters confirm what the Government has already done; in view of its merely declaratory nature, even an adverse result would not change the policy the Government has already adopted. It serves to demonstrate "the identity between the objective popular conviction personified in the leader and the subjective popular conviction living in the members of the nation." The simple majority of votes decides the issue, even if the measure submitted amends the Constitution.

The first plebiscite, taken on November 12, 1933, in conjunction with an election for the Reichstag, was to endorse the policy of the Government leading to the withdrawal from the League of Nations. The second plebiscite, of August 19, 1934, involved the Succession Act and has been thus far the only popular vote on an issue of internal policies. The third plebiscite was held on April 10, 1938, both in Austria and Germany, to ratify the preceding annexation of the *Ostmark*. The percentage of favorable votes for the three plebiscites was, respectively: 93.1%, 84.2%, and 99.57%.[2]

[1] Law of July 14, 1933 (RGB. I, p. 497).

[2] Calculations differ as to whether abstentions and invalidated ballot papers are counted for or against the issue.

Voting Practices

The actual manipulation of the voting procedure by the authorities was at first a subject of much anxiety among the voters and of speculation among neutral observers. Still deluded by the election practices of the Republic, under which the voter could record unharmed his opposition in the privacy of the polling booth, many believed that the ballot paper was a device for expressing disagreement. Clearly recognizing the dangers inherent in an honest election process, the regime took great care to minimize eventual opposition. In the first place national issues were chosen which would be endorsed even by opponents of the regime proper. The formulation of the question on the ballot paper was skillfully suggestive. In the later elections or plebiscites the Government resorted unblushingly to the cruder methods of intimidation, open coercion, and outright falsification of the election results. In particular, arbitrary interpretation of invalidated ballot papers—lately the only feasible means of registering disapproval—and flagrant breach of the secrecy of the poll were commonly resorted to in order to raise the percentage of popular consent to the desired figure. While the voting was open, tabulation of election results was strictly secret. The local returning officers and the electoral agencies of the districts recorded just the figures desired by the Propaganda Ministry, and a rather amusing competition between local authorities in boosting the figures without robbing them of their face value of truth took place. Needless to say, the pressure of the propaganda machine, geared to the highest pitch, helped to stampede public opinion. But even the docile Germans seem to have become aware of the intrinsic value of a vote stripped of its democratic ingredients and offering merely the empty motions through which each voter went, knowing that it did not matter how he voted.

Support of the Regime by the People

It is difficult to gauge the actual adherence of the nation to the regime. As will be shown in more detail later, each class of the people has its specific burdens and complaints. None is blessed by unmitigated happiness. But, heavy as were the exactions and privations imposed upon the masses and upon the different classes of the people, the vigilance of the Secret Police and the might of the armed forces at its disposal have thus far prevented sullen grumblings and sporadic restlessness from developing into any-

thing resembling organized disobedience or outright resistance.[1] For those who prefer a formula it may be said that perhaps some twenty per cent are sold to the regime for life and death: the profiteers, the jobholders, the pensioners, the beneficiaries, and the genuine enthusiasts. Perhaps another ten per cent are the implacable enemies of the Third Reich, silenced for the time being, but biding their time. This latter class may even be more numerous since the beginning of the war, and it is likely to increase while the war is in progress. But, apart from these two categories of political activists who are probably willing to do something for their political convictions, the vast majority of the people, as everywhere, allow themselves to be carried along by events. They are the masses which shout "Hosannah!" today and "Crucify him!" tomorrow, as the die is cast for or against the regime. But no internal insurrection has occurred and no revolution is likely to occur except as the consequence of a lost war. Moreover, be it noted that many even of those who are fundamentally opposed to the regime believe what is hammered into them by its propaganda machine, namely that Germany has been attacked by the Western powers and that she is fighting for her very existence as a nation. Experience teaches that war conditions create a patriotically inspired unanimity of public opinion in which all party differences disappear. National Socialist Germany is no exception to that rule.

[1] According to reliable information several unsuccessful attempts on the life of Hitler have occurred since 1933. All were hushed up. On the evening of November 8, 1939, when the party hierarchy celebrated the anniversary of the abortive Beer Hall "putsch" of 1923 in Munich, a time bomb or an infernal machine exploded a few minutes after Hitler and his retinue of National Socialist party leaders had left. The explosion wrecked the hall and killed and wounded a considerable number of the audience. Little credence inside and outside Germany was given to the official announcement that the alleged perpetrator of the plot had been arrested and that he had confessed. Various and conflicting interpretations of this serious incident were offered. It was described as an undertaking of the underground anti-Nazi opposition, a thesis which deserves little credence in view of the fact that this "shrine" of National Socialist symbolism must have been carefully guarded and searched before the convention took place. One version has it that the bomb was planted by the Secret Police or some other high Nazi officials in order to whip up national indignation and to rally the allegiance of the people behind the "beloved Fuehrer," whose very life was threatened by the diabolic plotters and war mongers in England. This assumption may be convincing to many in view of previous Nazi tactics when staging the Reichstag fire. That the plot was planned and executed by people who, by virtue of their official standing had easy access to the building, seems to speak in favor of this or a similar explanation. On the other hand, the parallel to the precedent of 1933 seems too obvious even for the gullible German masses. The present writer is inclined to believe that a genuine attempt on the lives of Hitler and the other leading Nazis was intended, and that the latter escaped alive by sheer good luck. Possibly Field Marshal Goering and Herr Himmler, whom the inscrutable wisdom of Providence had kept in Berlin at the time of the incident, may well be in a position to solve the mystery satisfactorily.

CHAPTER XXV. REICH AND LAENDER: GERMANY'S TRANSFORMATION INTO A UNITARY STATE

The End of German Federalism

Next to the substitution of the totalitarian single-party State for the multiple parliamentary State, perhaps the most conspicuous development under the Third Reich consists in the transformation of the federal into the unitary and centralized State. Objectively seen, this change represents that achievement of the regime which is most likely to be permanent, unless the present war ends in a dismemberment of the Reich, whether imposed by the victors or corresponding to a genuine demand of the defeated people. Beyond doubt, the administrative unification of the Reich was delayed by the intrinsic laws of German dynastic history. Grave doubts, however, exist as to whether the sociological stratification of the German people justified the headlong plunge into rigid centralization which deliberately neglected the religious diversities and tribal peculiarities of the nation. Rigid centralization, however, meets the necessities of dictatorship, which is bound to dominate the territory without intermediary institutions.

The momentous transformation was accomplished within less than one year. The First Act "for co-ordinating the Laender and the Reich" (March 1933) [1] was aimed mainly at breaking down the existing political differences within the various Laender. The political structure of the Laender was assimilated to that of the Reich. Most of the Laender passed appropriate Enabling Acts, handing over complete powers to the Nazified governments. New elections for the Laender diets were no longer permitted. The Second Act "for co-ordinating the Laender and the Reich" (April 1933) [2] brought the innovation of the Reich Regent (*Reichsstatthalter*), or State Governor, to be appointed by the Reich President, on the advice of the Reich Chancellor. On the whole, he

[1] Law of March 31, 1933 (RGB. I, p. 153).
[2] Law of April 7, 1933 (RGB. I, p. 173).

functioned as a sort of state governor appointed by the Reich. The Reich Regents, as subordinates of the "Fuehrer," represented the interests of the Reich, not of the Laender; and were to guarantee political unity within the Land and political conformity with the Reich.

Reconstruction Act of 1934

In spite of these changes, the dualism between Reich and Laender, which was among the main causes of the fall of the Republic, failed to disappear. Sectional spirit persisted—so much so that some of the Laender, although subjected to the uniformity of the one-party technique, preserved to a considerable degree the character of politically individualized units. Thus the complete elimination of the Laender as quasi-independent political entities became inevitable, lest the traditional federalism should transcend the frame of the single-party state. This huge step was taken in the Reconstruction Act of 1934,[1] the second "organic" act of the Third Reich. The sovereign powers of the states were transferred to the Reich, while the governments of the states were reduced to mere agencies of the Reich Government operating on the territory of the Land. The result is that the Laender are only provincial subdivisions of the Reich, and that the Reich is, at present, to all intents and purposes, a unitary state. The Reich Regents are subordinated to the Minister of the Interior; the governments are converted into bureaus of the Reich; the officials of the Laender, including the members of the Laender Governments, are henceforward officials of the Reich. Almost all powers of the Laender are transferred to the central authorities. In consonance with these deep-reaching structural changes, the customary institution of federalism, the Federal Council, became obsolete and was formally abolished.[2]

Position of the Reich Regents

The final solution brought the Reich Regents Act of 1935, the third of the "organic" statutes of the Third Reich.[3] It eliminated the last remnants of separate statehood of the Laender. The Regent, heretofore subordinated to the Reich Minister of the Interior, was integrated fully as a normal agency into the Reich administration, and was bound to accept instructions from the

[1] *Gesetz zum Neuaufbau des Reichs,* of January 30, 1934 (RGB. I, p. 75).
[2] Law of February 14, 1934 (RGB. I, p. 89).
[3] *Reichsstatthaltergesetz,* of January 30, 1935 (RGB. I, p. 65).

various Reich Ministers acting within the jurisdiction of their individual departments (Paragraph 3). On the whole, this move was equivalent to a degradation of the Regents. Although measured by the standards of personal prestige on equal footing with the Reich Ministers themselves, the Regent is nothing more than a political organ of the Reich, acting for the territory of the former Land and subject to direct orders of the Reich Government. Appointed and dismissed by the "Fuehrer" (Paragraph 9, *alinea* 1), he is no longer an official of the Land for which he acts. He represents Reich interests towards the Land, and not *vice versa*. His main function is that of adjusting the political and administrative life of his district to the general policies of the Reich (Paragraph 1, *alinea* 2)—a function not very dissimilar from, on a much smaller scale, that of the French prefect in the *département*. He is the veritable political boss of the district. His general administrative functions are very limited, though still wide enough to create considerable overlapping with the concurrent powers of the Reich administration exercised by other Reich agencies within the Land. In their present status, the Reich Regents function as intermediary agents between the central and the local administrations. Considering the loss of political power and actual influence, they are more a sort of buffer and relay between the provinces and the capital than a center of independent action.

Today eleven Laender, or districts of the "old" Reich, have a Regent; the division still reflects much of the dynastic structure of the former states.[1] Many of them are not large enough to justify a Regent of their own, but some of Hitler's old cronies had to be rewarded. To these should be added seven Reich Regents acting in Austria and one in the Sudetenland.

One might just as well admit that the present position of the Reich Regents is still utterly hybrid and incongruous. The explanation lies in the imponderables of the political personnel of the regime. The nominally exalted office of the Regent was created and maintained in order to gratify the ambitions of some of the "old fighters" whose loyalty towards the "Fuehrer" had to be rewarded by an especially fat piece of the spoils. Often the local party satrap had so deeply entrenched his influence and

1 The "Fuehrer" established Regencies for the following Laender: (The city in brackets is the capital). Bavaria (Munich); Saxony (Dresden); Wuerttemberg (Stuttgart); Baden (Karlsruhe); Hesse (Darmstadt); Hamburg (Hamburg); Thuringia (Weimar); Oldenburg and Bremen (Oldenburg); Brunswick and Anhalt (Dessau); Lippe and Schaumburg-Lippe (Detmold); and Mecklenburg (Schwerin).

hold on the area that he simply could not be demoted. Today the Reich Regents are able to pull the strings with the Ministers in Berlin and even the inner circle of the almighty Leader much better than their restricted administrative powers might indicate.

The Present Position of the Laender

For all administrative purposes, what once was Bavaria, Saxony, or Hamburg, is now only one of the territorial subdivisions of the unitary Reich, all of which are equally subjected to the pressure of the one-party State and its strictly centralized administration. Since progressively more functions were transferred to the Reich, together with the political independence the administrative autonomy of the Laender was more and more "hollowed out." Gradually the political institutions of the Laender were thrown on the dust heap. First to disappear permanently were the Laender diets. The powers of the suppressed parliaments, insofar as they survived, were usurped by the Laender governments, a process which faithfully reflects the identical development within the Reich. As final solution the Reconstruction Act of 1934 transferred also, as a consequence of the disappearance of the legislative powers of the Laender, the Laender governments into agencies of the Reich, exercising merely powers redelegated by the Reich. If the Reich deems fit to have a statute passed which applies only to the territory of the former Land, the Government of the Land may do so by and with the authorization of the Reich Minister to whose jurisdiction the matter belongs. Laender legislation is actually Reich legislation confined to the territory of the Land. As to the extent of such Laender legislation authorized by the Reich, it is restricted to purely local affairs, such as eminent domain, mining law, and agricultural matters. In conformity with the suppression of the Laender as separate political units, uniform Reich legislation spread rapidly over all fields previously reserved to the states. This process, perhaps the most beneficial of all reforms undertaken by the regime, is called *Verreichlichung*. Since it is impossible to enumerate all such matters now centralized, only a few of the more important fields are mentioned here: civil service, trade and crafts, press, administration of justice, taxation, traffic and communications, local government, police,[1] and even most of

[1] This important domain was centralized by Edict of the "Fuehrer" of June 17, 1936 (RGB. I, p. 487). Himmler, Chief of the SS and the *Gestapo* (Secret Police) is head of the entire German police and also a member of the Reich Cabinet.

the cultural activities. Moreover, all public officials of the Laender appointed and dismissed by the Reich are Reich officials.

Governments of the Laender

Yet it is misleading to assume that Germany is at present a wholly homogeneous and uniform country like France or Italy. It would be more appropriate to liken the present status of the Laender to that of Scotland or Wales within the frame of the United Kingdom. Curiously enough, the former Laender, though denuded of power and stripped of functions, still have governments of their own (*Landesregierung*). The Laender governments are organs of the Reich and not of the Laender. The "Fuehrer" and Reich Chancellor appoints, dismisses, and instructs them directly; but they are equally bound to accept instructions from the individual Reich Ministers. Last but not least, they are under the influence of the political boss of the district, the Regent, who may consider them as "his" Government. The main reason for this complicated, wasteful, and overlapping system is the latent fear of the regime that tribal or sectional differences, nurtured by "statehood" reminiscences or religious diversities, may reassert themselves. Moreover, some of the party politicians had built up for themselves such a strong local following that they had to be given a share of the spoils, and even Hitler has to respect this situation.

Even more puzzling appears the fact that the actual situation as to Reich Regents and Land governments is by no means uniform. Hitler has the power to assign to one and the same man the function of Reich Regent and of head of the Land government, or he may allow different men to hold the different offices. Consequently, some of the Laender can boast of having a Reich Regent in addition to a Land government; while in other territories the offices and functions of Reich Regent and Land government are merged, with wide variations in the last-mentioned class.

Prussia

In a class by itself is Prussia. Political dualism between the Reich and Prussia was one of the causes of the disintegration of the Weimar Republic. Prussia has lost her identity as an individual state even more, if possible, than the other Laender. The "Fuehrer" and Reich Chancellor holds nominally the office of Regent for Prussia; actually, by delegation, the functions are exercised by the Minister President of Prussia, Goering.[1] Since he is

[1] Edict of the Fuehrer and Reich Chancellor, of April 23, 1933 (RGB. I, p. 233).

not a Reich Regent, he is not responsible to the Reich Minister of the Interior or the Reich Cabinet. Responsible only to Hitler, and taking orders, if any, only from him, he occupies a singularly independent position. The members of the Reich Cabinet, with the exception of the Reich Finance Minister, are *ex-officio* members of the Prussian cabinet. In order to avoid duplication in staff and administration, all other formerly separate departments of Prussia, again with the exception of the Finance Ministry, were in due course absorbed by the corresponding Reich ministries. Thus the Prussian Government is an integral part of the Reich Government, and *vice versa*. This solution of the dualism between the Reich and the largest member state, Prussia, is strikingly similar to the arrangement under the Bismarckian Constitution of 1871. Prussia thus became a sort of jurisdictional province of the Reich. The fundamental difference, however, consists in the fact that before 1914 the Reich was controlled by Prussia, while now Prussia is controlled by the Reich.[1] On the whole, consciousness of "statehood" and manifestations of sectional tribalism, in the past the cornerstones of German political history, are at present well under control and completely submerged by the tide of the one-party State. It remains to be seen whether or not a resurrection takes place when the pressure of the one-party machine relaxes.

Regional Planning (Reichsreform)

The plan of a regional re-grouping of the Reich on geographical, or rather economic, lines (called in Germany *Reichsreform*), in the place of the existing pattern drawn by the accidents of dynastic history, has not yet materialized. Minor rectifications of the internal state lines, by exchanging territories among the Laender of Prussia, Hamburg, and Oldenburg, were accomplished in the so-called "Little Reichsreform" of 1937, by which also the time-honored Free City of Luebeck was wiped from the map and its territory distributed among the neighboring Laender.[2] For a long time the densely populated district around Hamburg badly needed a territorial re-alignment because parts of the area of the City of Hamburg belonged administratively to three different states. The Hansa City of Hamburg received a new Constitution [3]

[1] Prussia possesses, in addition, a number of peculiarities, such as the Provincial Governors and the Council of State—the latter a merely ornamental creation of Goering, praised by National Socialists as the pattern of a "Council of Leaders" (*Fuehrerrat*).

[2] Law of January 26, 1937 (RGB. I, p. 91).

[3] Law of December 9, 1937 (RGB. I, p. 1327).

in 1937. For all practical purposes, Hamburg should be considered more as a province under the direct control of the Reich than as a separate territorial unit comparable to a Land. An indirect attempt was also made to break down the stubbornly homogeneous "state-consciousness" of Prussia by making the governors of the Prussian provinces *(Oberpraesident)* the immediate and personal agents of the Reich Government, similar to the position of the Reich Regents. Yet, on the whole, the thorny problem of territorial re-alignment on economic or regional lines was shelved, perhaps because of underground resistance of local interests, insuperable even for the omnipotence of a totalitarian dictatorship, or perhaps because economic rationalization meant little to a nation bent on preparedness for war. During the last few years one heard little of a territorial re-grouping in *Reichsgaue* under immediate control of the Reich, without the cumbrous intermediary system of the Laender administration. Perhaps the position of the Saar district,[1] of Hamburg, and of the Reich capital of Berlin could have served as experimental patterns.

Austria

In March 1938, expansionist dynamism, sailing still under the flag of "racial self-determination," led the Third Reich for the first time beyond the historical boundaries of the Bismarckian Empire by the annexation of the independent state of Austria. Incorporation of Hitler's homeland was prepared by undermining the internal resistance through Nazi infiltration, and complemented by a military invasion of the defenseless neighbor. Both by a German statute [2] and by an Austrian "constitutional amendment," wholly illegal at that, the annexation was inscribed into the statute book. The official title of the Austrian "Land" is *Ostmark.* At once, by an endless series of decrees, German laws were extended to the newly acquired province and enforced by numerous officials of the Reich distinguished more by Prussian efficiency than by an understanding of the widely different political culture of a country with an old, proud civil administration justly renowned for its leisurely efficiency. Consequently assimi-

1 The eventual re-union of the Saar basin with Germany (after the plebiscite of January 15, 1935) was envisaged by the Treaty of Versailles. The regime deserves no credit for it. From the viewpoint of administrative technique, the Saar is an interesting example of direct administration of a territory by the Reich, without intermediary Land authorities, similar to the administration of Alsace-Lorraine after 1871. The Saar administration is headed by a Reich Commissioner, who acts as the Reich Regent of the territory.

2 Act "on the re-union of Austria with the German Reich," of March 13, 1938 (RGB. I, p. 237).

lation was considerably more difficult than, for example, in the Saar. While railroads, postal services, taxation, administration of justice, and police were co-ordinated without delay, many of the Austrian statutes continued at first to remain in force because hasty enforcement of German law would have thrown the administration completely out of gear. Economic life, however, was at once harnessed to the Four-Year Plan. The treacherous puppet, Federal Chancellor Seyss-Inquart, was made over into a Reich Regent, his Ministers into members of a Land Government. In addition, Herr Buerckel, tested as co-ordinator of the Saar, was appointed Reich Commissioner for the co-ordination of Austria (April 25, 1938). Incidentally, he was to be much more a supervisor than an advisor of the Austrian "Government." If one may judge from reports of dissatisfaction of the Austrian Nazis, it seems that the intrinsic resistance of the Austrian political system, known for its tenacity and stamina in distress, could be overcome only by a laborious process of pressure.

Territorial reorganization of the Ostmark took place only in 1939,[1] according to which the former federal state of Austria was divided into seven territorial districts *(Reichsgaue)*.[2] The *Reichsgau* is organized as an "administrative district of the state" and as a "corporation under local autonomy," whatever that may mean. Each is headed by a Reich Regent; but their powers are decidedly inferior to those of their German namesakes. The scheme impresses one as an effort to discourage from the outset the continuation of the tradition of Austrian statehood.

The Sudetenland, Memel and Danzig

The Sudetenland, before October 1, 1938, an integral part of the Republic of Czechoslovakia and at no time belonging to Germany, was incorporated into the Third Reich through the successful efforts of the English and French Governments culminating in the so-called "Peace of Munich" (September 1938). It was organized in 1939, on lines similar to the Ostmark, forming a *Gau* (district) of the Reich under a Reich Regent of its own (Konrad Henlein) who resides in Reichenberg.[3] At first existing legisla-

[1] Law on the administrative structure of the Ostmark, of April 14, 1939 (RGB. I, p. 771).

[2] The areas, corresponding on the whole to the former Austrian provinces, are: Vienna, Carinthia, Styria, Lower Danube, Upper Danube, Salzburg, Tyrol, and Vorarlberg. (Vorarlberg is a separate administrative unit under the Reich Regency of Tyrol).

[3] See Law on the administrative structure of the *Sudetengau*, of April 14, 1939 (RGB. I, p. 780).

tion remained in force unless it was in conflict with the letter and spirit of National Socialism. Later on, however, German legislation began to pour into the territory once so outspoken in its complaints about the rule of Prague, and the Sudeten Germans are by now well in a position to draw comparisons between authoritarian and democratic administration. The Reich Ministry of the Interior, charged with the technical details of co-ordination, flooded the district with Reich officials, much to the disappointment of the local Nazis, hoping for the best of the spoils.

The Memel district, a strip of land formerly belonging to East Prussia and assigned by the Treaty of Versailles to Lithuania's control as her only port, was ceded to Germany, under threat of military invasion by the Reich, in March 1939. It now forms a part of the Prussian province of East Prussia.[1]

The re-incorporation of "the Free City of Danzig" was accomplished on September 1, 1939, by a decree, issued and signed by the Nazi District Leader of Danzig Forster, previously appointed by Hitler "Head of the State." The decree, unique as a constitutional document, cancels the constitution of Danzig with immediate effect, concentrates all legislative and executive powers in the hands of the "Head of the State" and declares Danzig part of the German Reich. Incidentally, long before re-union with Germany actually took place, Danzig had been a full-fledged province of the Third Reich, both in political organization and economic co-ordination.

The "Protectorate of Bohemia and Moravia"

In the "peace" of Munich (September 1938) and the ensuing Vienna accords (November 1938), the Republic of Czechoslovakia, considered justly the strongest, best administered, and most progressive of the so-called "succession states" created after the World War, had to submit to a territorial mutilation in favor of Germany, Hungary, and Poland unparalleled in modern history. The Czecho-Slovak people were led to believe, by the promises of their former allies and false friends as well as of Hitler, that the rump-state would be permitted to lead a political life of its own. But the National Socialist plans for destroying completely the political independence of the only democracy east of the Rhine were pursued with vigor and cunning. The Czecho-Slovak Government was headed, after the resignation of Dr. Beneš (October 1938) by Dr. Hacha, Chief Justice of the Supreme Adminis-

[1] Law on the re-union of the Memel-Land with the Reich, of March 23, 1939 (RGB. I, p. 559).

trative Tribunal, as President; and Rudolf Beran, leader of the Agrarian (conservative) party, as Minister President. Though dissolving the unimportant Communist party and establishing a compulsory two-party system, the Government successfully resisted German-inspired efforts for Nazification of the nation. Consequently, the Nazis resorted to the strategy of the Trojan horse by undermining the political cohesion from within. Backed by an infiltration of German storm-troopers and the militant German minority, some of the leaders of the Slovak autonomist movement —whether misguided patriots or political mercenaries of the Third Reich is as yet an open question—proclaimed the independence of the Slovak province of Czecho-Slovakia under a German "protectorate" (March 1939). Immediately afterwards the Czech President was summoned to Berlin and forced, in the most literal sense of the word, to sign away the liberty of his people while German armies had begun to invade Czech territory without encountering resistance. On March 16, 1939, Hitler declared the former Czech provinces of Bohemia and Moravia, economically the most important part of the former Republic, a German protectorate with internal autonomy.[1] For the first time, the regime openly abandoned the principle of racial homogeneity and "self-determination of nations" which heretofore had camouflaged successfully its imperialistic designs in the case of Austria, the Sudetenland, and Memel, in favor of the slogan of naked Imperialism styled "living space" *(Lebensraum)*. In the light of recent events confirming the customary technique of the Nazis of achieving their ends step by step, the Edict can be considered only as a temporary arrangement and a prelude to complete and outright annexation of the Czech provinces. At present the occupied territories belong to "Greater Germany" and are under the "protectorate" of the latter. Only racial Germans are full-fledged German citizens, subject to German law and the jurisdiction of German courts. All other inhabitants are nationals of the Protectorate. Autonomy is granted to the Czechs within the limits of "political, military, and economic interests of Germany." As "guarantor" or custodian of the Reich interests, there functions the "Protector," residing in Prague. He is appointed by the "Fuehrer" as his and the Reich Government's sole representative, and acts under his personal instructions. As "Lord Protector" Hitler appointed Baron von Neurath,

[1] See Edict of the Fuehrer and Reich Chancellor, of March 16, 1939 (RGB. I, p. 485); and Ordinance of the Fuehrer, of March 22, 1939 (RGB. I, p. 549).

former Minister of Foreign Affairs. Both the head of the autonomous administration of the Protectorate, the President, and the members of the "Government" of the protectorate, need the confidence of the Protector for the exercise of their office. Members of the Government may be dismissed by him; he has not only the right of advising the Government of the protectorate, but may also veto its measures and even act, if he deems fit, in the place of the "autonomous" Government in all matters concerning the internal administration. His veto applies to all statutes, administrative acts, and even decisions of the courts of the protectorate. He is empowered to decree new law and to enact legal regulations overriding Czech "autonomy." [1] Foreign affairs are handled by the Reich Government. The Czech Government maintains an ambassador in Berlin. Moreover, the Reich controls the military establishment of the protectorate through garrisons; it dominates the communications, customs, postal services, and whatever the Protector holds to be in the interest of the Reich.

These arrangements evidence strikingly the National Socialist semantics of applying political terms to situations altogether contradictory to their general meaning. The hapless nation was delivered into the hands of a conqueror who uses the "protectorate" for the complete spoliation of its riches and the ruthless exploitation of its natural resources in the exclusive interest of German war preparedness and war purposes. The gold of the Czech National Bank, the entire military equipment, valuable machinery and outfits of industrial plants, the harvest, and whatever the occupation-authorities could lay their hands on, were carried away to the Reich. Man power was impressed into the German labor market. The use of the Czech language was restricted; Germanization is being pushed forward relentlessly. The Protector, overruling Czech opposition, imposed the full measure of the anti-Semitic legislation of the Reich. German officials as well as local Nazi bosses of the German minority and of the Sudetenland were placed in control of key-positions in administration. The Protector himself is merely a tool of the Nazi boss, K. H. Frank. The country is treated as was Belgium during the military occupation of the war—and worse. Yet the weight of the German military and economic machine has not yet crushed the stubborn patriotism of the Czechs, who had previously upheld their national aspirations for three centuries under Hapsburg rule. Political par-

[1] See Ordinance "on the legislative powers in the Protectorate of Bohemia and Moravia," of June 7, 1939 (RGB. I, p. 1039).

ties fused themselves into a bloc of National Unity which was joined spontaneously by 94% of the electorate; and the process of passive resistance for which the Czechs are admirably suited, is now in full swing. Since the outbreak of the war Germany is compelled to keep large garrisons in the territory in order to prevent an open revolution. When, during the first months of the war, Czech violence flared up against the ruthlessness of the invaders, the occupation authorities retaliated with ferocious persecution, adding new names to the endless list of Czech martyrs. The severest blow, however, dealt to a nation traditionally devoted to science and enlightenment, was the closing down of all institutions of higher learning for a period of three years, in conformity with Hitler's precepts as laid down in *"Mein Kampf"* that the subjected "inferior races" should be used only as the carriers of water and the hewers of wood, slaving for the master race. But it is safe to say that, in the long run, of all the morsels which the insatiable Nazi regime has swallowed thus far, the Czechs will prove to be the least digestible. It is more likely than not that the regime once shaken by the blows of military defeat or strangled by the pressure of economic distress will receive its stab-in-the-back from the exasperated Czechs, and the Austrians, for that matter.

Reincorporation of Territories Lost at Versailles

Moreover, on October 19, 1939, those parts of the old Prussia which were lost in the Treaty of Versailles to the newly created Polish State, were re-incorporated by decree of the Reich. The annexed territories embrace parts of West Prussia and the former Prussian province of Posen, together with the rich industrial district of Upper Silesia, belonging to Poland since 1919. The districts of West Prussia and of Posen are under the administration of Provincial Governors *(Oberpraesident)*, residing in the cities of Danzig and Posen respectively. The annexed territories correspond roughly to the areas lost by Germany after the World War, "rounded out," however, by considerable portions of former (Russian) Congress-Poland, including the important industrial center of Lodz.

The fate of the remnants of the Polish Republic, as far as it is in German hands, seems to be settled by now, in conformity with Hitler's doctrines on the treatment of "inferior races" as reflected in *Mein Kampf*. Originally it was assumed that a Polish rump state, with a semblance of local autonomy though under German

control and harnessed to the economic demands of the German *Lebensraum,* would be permitted to exist, not very dissimilar perhaps from the status of Bohemia and Moravia. But the plan failed because the conquerors could not find a convenient Polish subject as puppet. Consequently, what remained of Poland proper after the incorporation of its most vital parts by Germany and of the Eastern section by Soviet Russia, is treated according to the maxim *"Vae victis"* (woe to the conquered). The "remainder-state" (*"Reststaat"*) is officially spoken of as *General-Gouvernement,* headed by a Governor-General who resides in Cracow and rules the unfortunate country with an iron fist. The lot which befell the Poles is far more disastrous than the treatment meted out to the Czechs. The Polish intelligentsia is dealt with by the firing squad; the wealth of the bourgeoisie is destroyed or confiscated; by the hundreds of thousands the farmers are driven out to make room for the re-patriated Germans from the Baltic states and from elsewhere. In order to find a parallel for such wholesale and deliberate up-rooting of a people one has to go back to the Crusades or the expulsion of the Moors by Christian Spain. The Polish nation, as are the Jews, is singled out for extermination. Since this ultimate objective cannot be accomplished by one stroke they remain, in the meantime, the Helots serving the German master race.

After the German armies had conquered Belgium the Reich re-annexed formally, by way of statute, the small strips of land consisting of the former Prussian districts of Eupen and Malmédy and of (Prussian) Moresnet, which had been ceded to Belgium in the Treaty of Versailles. Finally, after the downfall of France, the most conspicuous price of victory for the Third Reich will be the restitution to Germany of Alsace-Lorraine. For many centuries in the past the possession of this rich land, endeared to French and Germans alike, had been the visible symbol of German or French hegemony on the European continent. Thus, with the exception of the small area turned over to Denmark after the first World War, Hitler has restored Germany to her pre-war borders, aggrandized by such vital parts of the former Austro-Hungarian Empire as Austria proper, the Sudetenland, Bohemia, Moravia, Slovakia and Poland.

The War and the German Satellite States

It is beyond the scope of this discussion to make predictions as to the future of heretofore sovereign states delivered to Hitler's

Germany through the might of her armed forces and the vicissitudes of war. At the moment of writing the outcome of the second World War is still in suspense, although the scales of warfare are weighed down heavily in favor of the Third Reich. If Germany is able to hold what she gained, a new system of satellite states, perhaps with a modicum of self-government in cultural matters, though wholly subjected to German economic and political interests, will emerge from the disaster which has befallen Western civilization. At this hour not even the dimmest outlines of the European organization under the *Pax Germanica* are visible. The following brief remarks must suffice for recording what is known about the present position of the conquered states.

When, in April 1940, Norway was invaded the Germans had hoped to deal with a submissive Government as it had been the case in Denmark where the King and Cabinet of Mr. Stauning (a coalition Government) had placed themselves under the "Protectorate" of the Reich without resistance. At first a puppet Government under the name of one V. Quisling, the "leader" of the local Nazi party—wholly insignificant in numbers but of decisive influence as the nucleus of the "Fifth Column"—tried its hand; it was soon discarded by the invaders. Hereafter an "Administrative Council," appointed allegedly by the Supreme Court on the basis of the Norwegian Constitution of 1814, seems to carry out the functions of the civilian administration under the instructions of the military commander. The latest report has it that J. Terboven, a Nazi *Gauleiter* from Essen, has been made Commissioner for the internal administration of Norway, under Hitler's direct control.

Similarly, the internal administration of the Netherlands was continued, after the flight of the Royal House to England, by local authorities under the control of a Nazi Commissioner in the person of the versatile Dr. Seyss-Inquart, who had served in similar capacities in Austria and Poland.

Next to nothing is known about the internal conditions in Belgium. King Leopold III received the reward for having deserted his Allies in the midst of battle. Reports indicate that the "Soldier-King" still reigns and perhaps may also rule over Belgium, with the aid of a newly formed Cabinet in which figures the well-known Socialist and Pacifist Henry de Man together with military confidants of the King.

The fate of France after the fall of the Third Republic is unknown.

SECTION III. THE INSTRUMENTALITIES OF POWER

Political Power and Government

From their fighting years against Weimar, National Socialist leaders learned that the success and stability of a political system depend less on actual governmental institutions, serviceable as they may be for the ends desired, than on the realization of the primitive truth that governing consists in the *exercise* of political power. Obsessed by the will to power, and exceptionally able to use power for their political aims, they devised, in addition to a most appropriate arrangement of government, a system of controls admirably adjusted to the psychological conditions of modern mass-society. These instrumentalities of political power are operated, through remote control, by the inner circle of those in actual command. Seen as a whole, the power-generating processes are rooted in the two fundamental elements of mass-society, that is, organization and psychological inducement resulting from persuasion, emotion, and coercion. The National Socialist regime has developed mass control by organization and emotional spell into both an art and a science. For the student of the "state in motion" *(Bewegungsstaat)*—as the Third Reich most fittingly describes itself—careful observation of these phenomena is as indispensable as the realization of the governmental structure in itself, and even more so, because governmental institutions and power-generating processes dovetail to perfection. The National Socialist regime stands out as the most accomplished machinery for mass control known in history.

The one-party machinery consists in conferring exclusive political power upon the only existing political organization, the NSDAP, which, in turn, is the instrument of one man, who controls, through the party, both State and people.

Legal Foundation of the One-Party State

The legal instrument for the establishment of the one-party State was given to the Nazis through the Ordinance of the Reich President of February 28, 1933,[1] suspending civil rights, and the Enabling Act, authorizing the Government to overrule the constitution by simple Government decree. Thus the leaders could obtain "totality" of political power as they had desired. The statute "concerning the formation of political parties" of July 1933,[2] today the dreaded weapon of the regime against the underground opposition movement, declared the NSDAP the only political party. It threatens with extremely severe penalties all efforts to maintain the political cohesion of dissolved parties or to constitute new parties. Mere discussion of such plans is dealt with by the courts as attempted treason. By this time, trusted "old fighters" had occupied all politically relevant positions in state and communes, through the political device of personal union between a local party function and a state or communal office. The legal capstone of the complete amalgamation of State and party was the statute "on the unity of party and State" of December 1933.[3]

On closer attention, this strange legislative document (enacted, of course, by Government decree), while it contains little of positive law, reveals the fulfilment of the fundamental theoretical postulate of the regime: the fusing together of the threefold divi-

[1] See *supra*, p. 414.
[2] *Gesetz über die Neubildung politischer Parteien,* of July 14, 1933 (RGB. I, p. 479).
[3] *Gesetz über die Einheit von Partei und Staat,* of December 1, 1933 (RGB. I, p. 1016).

sions of State, party, and people into one indissoluble unit. The NSDAP, as the only legal political organization, becomes a state within the State, placing, in many respects, the party as an elite above the common law, and delivering the control of the State machinery into the hands of the party hierarchy. In the abstruse phraseology of the statute, the party was declared "the bearer of the State idea" and, as a public corporation, was given far-reaching privileges of exemption from the general laws. On the other hand, members of the NSDAP and its affiliated organizations are under special duties, violations of which are punishable by special party courts legally recognized as judicial authorities of the State (Paragraphs 3-8). In March 1935 the "Fuehrer" issued more detailed regulations on the organization, structure, and powers of the party, now integrated into the State.[1]

Organization of the National Socialist Party

(a) Structural Organization. In the present set-up of the National Socialist Party, the so-called "structural parts," or groups *(Gliederung),* are to be distinguished from the "affiliated associations" (called *angeschlossene Verbaende).* The first class may be considered the core and center of the actual controlling machinery, while the second class coincides roughly with those portions of the population over which control is exercised. The "structural groups" proper—six in all—are: the SA (Storm Troopers); the SS (Elite Guards), mainly the huge police force of the regime; the National Socialist Motor Corps; the Hitler Youth; the National Socialist Students Association; and the National Socialist Women's Organization. The "affiliated associations," nine in all, embrace: associations of physicians; lawyers; technicians; teachers; university teachers; public officials; and, most important of all in numbers and influence, the German Labor Front, successor of the trade unions. In addition, of course, the party includes the individual party members, estimated at present at some four millions —exact figures are never published. The actual membership is held down at present by temporary stoppage of admission. It is clear that the individual party member, if—as is the rule—he is at the same time occupied in a remunerative profession, is under the double control of the party and of the party-controlled association to which he belongs; while the non-party member is subject to control by the party officials who run his professional organization.

One could as well describe methodically an ant heap as the

1 Ordinance of the Fuehrer, of March 29, 1935 (RGB. I, p. 502).

various subdivisions and activities of what appears as the NSDAP in operation. The existing system, "one of the most complicated, disorderly, overlapping, and amorphous organizations of the world," as it is aptly described,[1] is an outgrowth of one of the fundamental traits of the German character: that of organizing for the sake of organization, regardless of the effect created by the organizing activity.

The amazing fact in this elaborate chaos is the continued dualism between party and State, despite their alleged identity. The NSDAP maintains a quasi-governmental organization parallel to, though strictly separated from, the apparatus of the State. Even if occasionally offices of the State and of the party are held by the same man, they are carried on by different staffs.

The apex of the party pyramid is the Central Directorate of the Party *(Oberste Reichsleitung)*. It is the authentic counterpart of the Reich Government, a party Cabinet composed of the men of the "inner circle." This relatively small group of some twenty or thirty men, whose names are almost unknown outside Germany, ruled the nation prior to the outbreak of the war; today much of their power may have been surrendered to the military leaders. The Reich Cabinet proper only executes the policies mapped out by the Central Directorate of the party. While the Ministers themselves are constantly before the eyes of the public, these most influential men are the power behind the power. Only a few members of the Reich Government belong to the inner circle.[2] The majority, and perhaps the most powerful among them, hold no State positions.[3] This group, unaffected by the purge of 1934, has remained unchanged since the beginning and has developed a remarkable degree of team work, or, as others may say, of "gang spirit." The system is duplicated and triplicated by the staffs and organizations of their own maintained by individual members, all of them connected more or less directly with Party Headquarters. This gigantic army of party officials is constantly increased in order to make room for job-hunters and favorites of the influential leaders. These offices, sections, departments,

[1] Stephen Roberts, *The House that Hitler Built*, London, 1937, p. 72.

[2] E.g., Hess, as Deputy-Leader of the "Fuehrer" in his capacity as leader of the party, not, of course, as Reich Chancellor; Goebbels; Darré; Frick; Ley.

[3] Only a few names may be mentioned: Philip Bouhler, "business manager" of the party; Dietrich, press chief of Hitler; Rosenberg, Director of cultural activities of the party; Amann, head of the mammoth publishing concern which sells *Mein Kampf* and owns more than half of all German newspapers; Buch, as head of the party tribunal, the chief executioner; Schwarz, treasurer of the party funds; and many others.

institutions, and organizations are interrelated and subordinated to each other in a mysterious way which not even those in the center of power are able to unravel. Criss-cross control, part and parcel of the party mechanism, is perhaps the intrinsic secret of its actual power. Over-organization seems to be an inherent vice of dictatorial government, popularly renowned for its efficiency and simplicity. Yet in fairness it should be stated that not a few among the scores of leading party bosses are first-rate organizers with great business ability, administrative qualifications, and executive talents.

(b) Territorial Organization of the NSDAP. The territorial organization of the NSDAP took its cue from the military cadres of the army. In addition, it is impossible to overlook some striking resemblances to the organization of Fascism in Italy. The "old" territory of the Reich is divided into 32 party districts *(Gau),* lately increased by the newly established *Gaue* of Austria, the Sudetenland, and of Bohemia and Moravia, not to mention the additional districts in foreign countries not yet subjugated, though enrolled in the *Auslandsorganisation.* Party organizations of German nationals exist, in more or less secrecy, in all foreign countries where the local authorities are lenient enough to tolerate them. On the highest level of the party officials, who as a group form a closely knit hierarchy of party functionaries *(Amtswalter),* are to be found the party District leaders *(Gauleiter),* second in influence and power only to the bigwigs at the center and; without exception, trusted party bosses from the ranks of the "old fighters." In many cases they simultaneously hold high State offices, serving also as Reich Regents or members of a Land Government. On the next lower level follow the regional subdivisions of each *Gau,* called *Kreis,* corresponding to the county and headed by a Regional party leader *(Kreisleiter).* Both the district and the regional subdivisions are generously equipped with staffs of officials devoting their full time to the various tasks of administration and control. The *Kreis* again is subdivided into the local party groups *(Ortsgruppe),* which exist in each city, town, village, and hamlet, again staffed by a host of paid party professionals. The District leader is appointed directly by Hitler; the Regional leader, at the suggestion of the District leader, also by Hitler; while the leader of the local group is appointed by the District leader at the suggestion of the Regional leader. In towns the local group is again split into numerous "cells" and "blocks." The official of the latter, the Blockwarden *(Blockwart),*

is undoubtedly the most important link in the huge party organization. In each apartment house resides, like a spider in his web, the party confidant, frequently the janitor, who keeps a suspicious eye on all movements of the tenants, observes their visitors, and spies into the living habits of each member of the household. Only those familiar with the officiousness, rudeness, and corruption of European janitors can evaluate the totalitarian aspect of this official intrusion into private life. The Blockwarden has become the most effective instrument of control, espionage, and denunciation through which the regime holds the individual in its grip.

The Party Congress

Every year in September the Party Congress *(Parteitag)* takes place in Nuremberg. "The City of the Party Rally" has erected, during the last few years, a magnificent plant as fitting background for one of the most spectacular gatherings of our time. The Party Congress serves at the same time as a party convention and an official State ceremony, used by Hitler for important announcements of internal and foreign policy.[1] Huge masses of frenzied participants and spectators—the latter performers no less than the others—create the proper setting for Hitler's pontifical revelations of Nazi politics, philosophy, and culture. In spite of its recent tradition, the Party Congress is already imbued with a weird and pagan ritualism which few people are able to resist. The stagecraft of the mammoth rallies, the fanaticism of the masses, the banners, marchers, shouters, the circus element and the melodrama woven into it, Hitler's personal performances —miracles of physical endurance and mental alertness—all contribute to the atmosphere of delirious and calculated mass-emotionalism, which may be likened to the religious hysteria of the fanatical Moslem crowds in the forbidden City of Mecca.

Activities of the Party

According to National Socialist doctrine, the party is not a minority of particularly ruthless and successful men who seized political power when it was offered, but an integration of the "trinity of State, movement, and people" into the "movement

[1] In 1935, enslavement of the Jews by enactment of the Nuremberg laws, for which purpose the Reichstag was convened to Nuremberg; in 1936, announcement of the Four-Year Plan; in 1938, the attack against Czechoslovakia. The Party Rally of 1939, prematurely named "Party Congress of Peace," was cancelled because of the war.

State" *(Bewegungsstaat)*. The concept is another striking loan from the Catholic repertory. The National Socialist Party is the dynamic link which connects the state with the people by penetrating into the state and the people. In order to make these rather cryptic statements more palatable, the doctrine ascribes to the party four separate though interrelated tasks: (a) The movement educates the people and evokes in them the consciousness of being a political nation with a special mission for which duty and sacrifice are instilled into the masses. (b) The movement conveys to and interprets for the people the proper "world outlook" *(Voelkische Weltanschauung)*.[1] (c) The movement devotes itself to the all-important task of selecting and training the future leaders, character being more essential for leadership than professional or bureaucratic knowledge. (d) All three tasks culminate in the fourth and highest: that the movement should incorporate the political will of the people.

This romantic rigmarole beclouds the simple fact that the one-party system serves both for justification and for preservation of a factual power-situation created by the boldness and pluck of a small political group carried accidentally into power. The elite of party loyalists created a mass-basis for the maintenance of political power by way of an admirable organization. In a nutshell, the NSDAP guarantees the *status quo* of power to the ruling class which, by creating jobs, arousing mass-emotionalism, and, last but not least, by spreading terror, maintains and increases its own hold over the people.

Privileged Position of the Party

The actual power of the party lies in the fact that it controls the State, while it is itself immune from supervision or interference by the State. The party itself, party officials and party members, are privileged in many ways. The party as such is sovereign and exempt from State control within its own sphere. No clear line of demarcation is drawn between State and party activities. The party maintains its own discipline over party members by full-fledged party courts dealing with violations of the party code and party duties. In practice, these party courts, climaxing in the dreaded highest court in Munich under Major Buch, enforce iron discipline and obedience among the party members. Officially the maximum penalty meted out by party courts is exclusion from

[1] This philosophical monopoly has found its way even into the statute book; see par. 1 of the law for the unity of State and party.

the party, which implies, according to the system of licensing of professions, the economic ruin of the convicted. Party members, in particular "old fighters," enjoy many privileges economically, and are given preferential treatment in obtaining employment and lucrative positions. The party as a whole and all its officers and members are surrounded by an impregnable legislative armor of protection against attacks and even criticism, however well founded. Symbols, uniforms, and emblems are specifically protected against misuse and defamation. The most effective protection is accorded to the party, its leading men, its institutions and policies by a notorious law of 1934 which punishes insidious attacks against the State and the party, extending even to utterances "likely to undermine the confidence of the people in the political leadership." [1] The statute forestalls even justified complaints about party activities and immunizes party officials from exposure for corruption. Party officials enjoy procedural privileges; the party itself is exempted from taxation and fees. The immense party property, covering whole city quarters, is tax-exempt. Finally, the regime has made itself secure against claims arising from "illegal acts committed in connection with the National Revolution" by withdrawing suits concerning such claims from the ordinary courts and transferring them for decision "in equity" to the Minister of the Interior.[2]

Participation of the Party in State Activities

While the party does not brook interference within its spheres of action, it participates officially in various ways in the actual administration and legislation of the State. An ingenious device for the legalization of the spoils system—which had been, under the Weimar Republic, one of the most effective weapons of propaganda against the Republic—is that of combining a party office and a State office or of making a party official the incumbent of a State office. This expedient of "personal union" between party and State allows the penetration of the State by National Socialist spirit and prevents the professional State bureaucracy from entrenching itself in the civil service against party influence. As has been mentioned already, the leading party boss of the district *(Gauleiter)* is regularly also the leading political official in the government and administration of the Laender (Reich Regents,

[1] Law against insidious attacks against State and party, of December 20, 1934 (RGB. I, p. 1269).
[2] Law of December 13, 1934 (RGB. I, p. 1235).

members of the Laender Governments, Prussian Provincial Governors). Moreover, at the top, leading men of the party hierarchy occupy key-positions in the Reich Government.[1] Those members of the inner circle of party leaders who do not hold official positions in State or municipal life are at least members of the Reichstag or the Prussian Council of State. Such duplication, triplication, and multiplication of offices carries with it also the advantage of accumulated salaries, again one of the main attacks directed by rising National Socialism against the "corruptness" of the Republic.

The luxury of the new ruling class and its female retinue, evidenced in the marriage festivities for Goering, the birthday celebration for Hitler, the new estates of the party hierarchy—all of them a few years ago penniless white-collar workers, retired army officers, or unemployed intellectuals,—is of small comfort to the little fellow, who is told to prefer cannons to butter, a slogan evidently less appreciated by the ruling class. One may add to the picture by referring to Hitler himself; his Spartan habits are widely advertised, and he has generously waived his salary as Reich Chancellor (at least for the first year); but he is the richest among the *nouveau riches,* partly as co-proprietor of the mammoth publishing house of the "Eher" concern, partly because, as author of *Mein Kampf,* he has enviable methods for increasing the sale of the permanent best-seller of the Third Reich.

Furthermore, the party participates in the appointive power. The Deputy-Leader of the party (Hess) has to pass on all appointments which Hitler has not reserved for himself.[2] No leading official of Reich or Land can obtain appointment unless his party loyalty is approved by the party.

Similarly, the party has invaded the dominion of communal government. The Municipal Government Act of 1935, another of the "organic" statutes of the Third Reich,[3] evidently attempts to square the circle by proclaiming that "municipal administration is to be self-government while at the same time establishing

[1] Hitler: Supreme Leader of the party and Reich Chancellor; Hess: Deputy-Leader of the party and *ex-officio* member of the Reich Cabinet; Darré: Minister of Nutrition and Agriculture, National Leader of the German Farmers, and Chief of the Farm Board of the party; Frank: Leader of the National Socialist Lawyers Association and Minister without portfolio; Himmler: Chief of the SS and Supreme Leader of the Reich police.

[2] See Edict of the Fuehrer, of September 24, 1935 (RGB. I, p. 1203); and also Paragraph 31 of the Public Officials Act, of January 26, 1937 (RGB. I, p. 39).

[3] *Deutsche Gemeindeordnung,* of January 30, 1935 (RGB. I, p. 49).

conformity with the political aims of the Government" *(Staatsfuehrung)*. The democratic-parliamentarian form of municipal government, forcefully suppressed since March 1933, was formally abolished. The mayor *(Buergermeister)* and the associates of the mayor *(Beigeordnete)* are appointed by the Reich Minister of the Interior or, respectively, according to the size of the municipality, by the Government of the Land. For special interests of the party, the "Delegate Commissioner of the National Socialist Party" is appointed in each town by the Deputy-Leader of the party. The Delegate Commissioner's consent is necessary, among other matters, for appointment and dismissal of the mayor, the associates, the town councilors, and for the enactment of the municipal charter. Needless to say, the leadership principle also dominates the municipal sphere, and no trace of popular participation is left.

The statute book, of course, does not reveal the extra-legal influence of the party officials on the conduct of civil administration. The party claims and exercises the unwritten right to supervise and control the entire administration, and it even usurps, against the letter of the law, adminitrative activities of the regular officials; so much so, that the common man now turns first to the local party boss about his particular wishes and grievances. The powers of the lower party bureaucracy are, in fact, beyond control. The whole fabric of routine administration with which the common man comes most in contact in his workaday life is visibly rotting under the mildew of nepotism and favoritism, through interference of the local party bosses with orderly processes of administration.

Last but not least, the party participates in the actual process of legislation. In the first place, all important legislative policies and legislative plans emanate from the inner circle of the party, for which the Reich Government and the permanent ministerial bureaucracy serve only as technical clerks. Moreover, the Deputy-Leader of the party (Hess) participates *ex-officio* in all legislation of the Reich Cabinet and the Reich Ministries. The interposition of the Deputy-Leader in legislation explains the existence of his huge staff, since without his *fiat* no legislation can be enacted.

"Winter Relief"

In the so-called "Winter Relief" and the Hitler Youth, activities of paramount importance to the average citizens, the party is completely above and beyond any control of the State or the pub-

lic. The Winter Relief Work, at first organized as a charitable contribution of all classes for the destitute, has become an extra-legal method of compulsory taxation under exclusive control and management of the party. It is less burdensome for the people accosted on the streets by uniformed collectors whom they dare not rebuff than for business and wage earners. For the former it amounts to an arbitrary and frequently penalizing assessment of contributions, for the latter to a compulsory tax deducted from the pay envelope. In 1936 the party legally gave it a completely independent financial administration under the leadership of the Ministry of Propaganda and a large staff of party officials.[1] As no public control is possible, reports are beyond verification that the funds are used as easily for undisclosed party purposes as for assistance of the poor. Although elimination of unemployment through the armament-boom has reduced the number of people without income, wages are still low enough to make charitable assistance gratifying to many.

Hitler Youth

National Socialism realized at an early date that he who holds the youth of a nation holds its future. The party itself was, from the outset, a movement of young enthusiasts. The Hitler Youth, founded in 1926 as a party institution, was converted in June 1936 into a State institution under party control and management.[2] The Hitler Youth, as a "structural group" *(Gliederung)* an integral part of the party, is headed by the "Reich Youth Leader" (Baldur von Schirach) appointed by and subordinated to Hitler himself. He is a member of the inner circle of the party *(Reichsleitung)*. Beginning at the age of six, boys and girls are conscripted into the various formations of the Hitler Youth, where they remain up to the age of 18;[3] only physical incapacity is ground for release. By virtue of the statute (Article 1), "the entire body of German youth is united within the Hitler Youth." Consequently all competitive organizations of confessional or professional character, especially the youth formations of the Catholic Church, were outlawed. During their tender and most impressionable years boys and girls are under military training and are

[1] Law "on the Winter Relief Work of the German people," of December 1, 1936 (RGB. I, p. 995); and "Constitution of the Winter Relief Work," of March 24, 1937 (RGB. I, p. 423).

[2] Law on the Hitler Youth, of December 1, 1936 (RGB. I, p. 993).

[3] The subdivisions are: between 10 and 14 years, the "Young Folk" (*Jungvolk*) and the "Young Maidens" for boys and girls, respectively; from 14 to 18, the Hitler Youth, for boys, and the Bund of German Girls.

educated to lead a "Spartan life" which will stand them in good stead once they have climbed the ladder to the higher brackets of the party hierarchy. They are drilled, by party officials, in the slogans and world outlook of the party; taught adulation of the "Fuehrer" and the other party heroes; and imbued with the racial myth and the tenets of German superiority and mission. Few parents dare to balance Nazi teachings by a more liberal and less mechanical education at home. Though seemingly another triumph of National Socialist organization, the actual technique of militarizing the spirit of the young may have unexpected results, if one is to believe reports about physical over-training complained of even by the army, disruption of family life owing to conflicting pedagogical aims, and lack of intellectual interest observed later on in the professions. Decline in enthusiasm and awareness of the boredom of a stultifying education are noticeable even among the Hitler Youth itself, save in the very young. At the outbreak of the war the Hitler Youth, in keeping with its military training, was at once enlisted for services abandoned by mobilized men. Totalitarian war spares no age. But when one reads the reports that the masses of the young German soldiers threw themselves into the battle with arms interlocked and with patriotic songs on their lips—like the fanaticized Moslems of the Holy War—one sees the results of the education of the Hitler Youth. Seven years of incessant indoctrination with missionary fervor and seven years of training in blind obedience have converted the minds into machines of war.

CHAPTER XXVII. NATIONAL SYMBOLISM

Closely related to the progressive penetration of the party into the State is another instrumentality of political power which derives its strength as much from psychological as from organizational sources. Learning from the sins of omission of the Weimar Republic, National Socialism realized from the start that symbolism, in an age of mass-government, is an essential instrument of political power. Alloyage of emotional symbolism as practiced under the Third Reich is skillfully blended from religious and political ingredients, and caters adroitly to traditional prepossessions of the German mind. Once power was conquered, party symbolism became, by way of the statute book, the recognized State symbolism.

A "dynamic" State thrives on the mobilization of emotionalism; and concrete and visible stereotypes of emotionalism had to be created. Only a few of them can be mentioned here. Under the Republic, the flag had been a symbol of discord between competing loyalties of the old flag of black-white-red and the new national colors of black-red-gold. National Socialism tolerated at first, for tactical reasons, the co-existence of the traditional black-white-red and the Swastika *(Hakenkreuz),* borrowed, incidentally, in the early days of the movement, from another political group. In September 1935 [1] the Swastika became the official Reich and national Flag (also for the Merchant Marine), while the Reich "colors" remained as black-white-red. Flying of the flag by private persons when ordered is mandatory.[2] Vilification and defamation of national flag and symbols, once one of the favorite propaganda methods of the movement in opposition, is under severe penalty. The emblem of the party was raised to the rank of the official symbol of State sovereignty.[3] Of even greater importance in daily life is the symbolic value of the uniform, well

[1] Reich Flag Act of September 15, 1935 (RGB. I, p. 1149).
[2] Jews are forbidden to fly the Swastika flag.
[3] It is a rather abominable combination of the Swastika, a streamlined Reich eagle, and a modernistic wreath of oak leaves.

known token of "virility" in all dictatorial states and, at the same time, an indispensable device for organizing masses into easily controllable military cadres. Germany, always more uniform-minded than other more civilian nations, displays an endless variety of uniforms, beginning with the army and the military organizations of the party and extending to the Labor Service and even the Cabinet Ministers. Uniforms, badges, emblems, and all symbolic paraphernalia of the party and the State are protected by special legislation.[1] With equal insight into the German psychology, the regime also restored decorations and orders, banished as unworthy of democratic dignity by the Republic. Hitler, as sovereign, reserved to himself the right of conferring decorations. The highest State decoration at present is the German Eagle, bestowed upon and accepted by Mr. Ford and Colonel Lindbergh, among other foreigners. Furthermore, for glorification of the regime and as occasions for the showmanship of its rulers there are the National Holidays, another important instrumentality of emotional indoctrination through symbolism. Participation of the organized masses in demonstrations and festivities, some of which reveal a deliberately religious or cultish character, is mandatory. In daily life the Hitler salute, copied from the Fascist salute and, by the way, once the greeting of slaves and *liberati* in ancient Rome, was to serve the purpose of expressing pride in the regime and in national unity; but as a symbolic gesture it has worn thin. Other emotional *stimulantia* much in use are the national anthems, of which the regime has two, the old hymn of the Empire and the Republic alike, *"Deutschland ueber Alles,"* and the *"Horst-Wessel Song,"* named after its alleged inventor, a party martyr allegedly murdered by the Communists in the fighting years.[2] By law, both hymns are "the sacred property of the German people." Since the beginning of the war a new hymn is popular, designed especially for stimulating hatred against and contempt of England (*"Wir fahren gegen Engelland"*), a march-like piece of stirring though rather vulgar music.

Finally, as devices of symbolistic indoctrination and vehicles of emotionalism should be considered all the other manifestations of stagecraft and pageantry of which the regime is past master, such as organized processions, commandeered mass-dem-

[1] See, among others, law of December 20, 1934 (RGB. I, p. 1269).

[2] The *Horst-Wessel Song* was characterized by the Supreme Court, in a copyright lawsuit, as an amateurish hash of bars and words taken from well-known soldier- and folk-songs.

onstrations, and, last but not least, the new buildings and public works of the regime, as visible signs of National Socialist culture, destined to last at least a thousand years and to evoke the admiration of later generations. City planning and city rebuilding is rated as the foremost hobby of the "Fuehrer," whose blueprints are the architectural law of the land. Hitler himself, therefore, is responsible for the monumental though monotonous classicism in the style of Nazi architecture. As has no other Government, the regime has mobilized endless possibilities of organized mass-control for creating the atmosphere of incessant emotionalism and excitement which the hysteria of a "dynamic" state demands. Again one may doubt whether the technique of arousing mechanized emotionalism will weather the storm once it has to be put to a real, and not merely a symbolical, test of loyalty.

CHAPTER XXVIII. NATIONAL SOCIALIST ADMINISTRATION OF JUSTICE

The Concept of Law

Administration of justice as a means of subjecting the German people to the regime is another instrumentality of political power, second in importance only to the party organization itself. The "Fuehrer" is declared the supreme source of law. Whatever the "Fuehrer" wills to be law *is* law, binding judges and courts, irrespective of the outward form which such legal manifestations of the "Fuehrer's" will may assume in practice. The law is the "order of the 'Fuehrer' " *(Fuehrerbefehl);* and the "order of the 'Fuehrer' " is the law. Law is no longer an objective concept of justice and impartiality, but must serve the "folkish ordering of life" *(voelkische Lebensordnung).* Judges and judicial officers have to serve the interests of the regime, or, in the words of one of its most wicked slogans: "Law is what is useful to the German nation." The necessary concentration of powers in the hands of the "Fuehrer" and the Reich Government, characteristic of dictatorial government, does not brook independence of the judiciary branch or independence of justice and judicial administration. In the purge of 1934, Hitler arrogated to himself the supreme judicial powers.[1]

The Subjugation of the Bench

Consequently, only a good and loyal National Socialist can be a good and loyal judge. The decisive legislative step for weeding out the "politically unreliable" members of the judicial profession was taken as early as in April 1933 by a now famous Government decree, paradoxically styled "for the restoration of the pro-

[1] In his speech before the Reichstag on July 13, 1934, he declared himself the Supreme Law Lord of the nation (*Oberster Gerichtsherr der Nation*); see also law "concerning measures of self-defense of the state," of July 3, 1934 (RGB. I, p. 529), declaring "legal" the measures taken on the previous days "in order to suppress treasonable attacks."

fessional service." [1] Paragraph 4 reads as follows: "Officials who, in view of previous political activities, do not offer the guarantee of defending the national State without reservations, may be dismissed from service." The precise number of judicial officers removed from office by virtue of this decree is not known. But not only were all formerly socialist, democratic, liberal, or republican judges and public prosecutors (district attorneys) retired in due course, but the threat of dismissal hung like the sword of Damocles over those remaining in active service. The places of retired officials were filled with partisans eager for promotion, and later with new applicants who had been subjected to a painstaking process of coaching in National Socialist doctrine. Today all judicial positions down to the lowest level of the District Court *(Amtsgericht)* are obtainable only for loyal supporters of the party; what remnants of the older and less pliable generation of jurists may still survive toe the line under an ever-present threat of dismissal.[2] Only the Supreme Court *(Reichsgericht)* resisted, to some extent and for some time, complete Nazification. Moreover, from the beginning, the party, through the District leaders and officers of the Elite Guard, took a hand in deciding on the retention or dismissal of the older and the appointment of the new judges. No wonder that lately complaints about the quality of judicial work are being raised even among the party members.

Judicial Review

Obviously there is no longer any room for judicial review. The Germans, not at all a "court-minded" nation, have never had any practical use for this supreme criterion of the rule of law. Even under the Republic, though it was finally recognized as implied in the judicial function, reviewing the constitutionality of statutes, except in the case of the Constitutional Tribunal, which dealt only with matters of public law, was practically non-existent. The regime made short shrift of an institution considered in any case as "alien to legal tradition." By no stretch of imagination could the institution be reconciled with the infallibility and inviolability of the "Fuehrer" as the supreme source of law, which may reveal itself through a Government decree called a statute, or an ordinance, or even an edict *(Erlass),* by now one of the common

[1] *Gesetz zur Wiederherstellung des Berufsbeamtentums,* of April 7, 1933 (RGB. I, p. 175).

[2] Public Officials Act (*Deutsches Beamtengesetz*) of January 26, 1937 (RGB. I, p. 39, see Par. 171), which, after expiration of the statute of April 1933, took the precaution of continuing the provision for removing "unreliable" judges.

and most informal emanations of the "Fuehrer's" will. Where is the written constitution with which ordinary statutes are to be compared in order to test their validity? Even the most obvious function of the court, that of considering whether or not an ordinance of an inferior Government agency observes the confines of the delegation of powers within which it acts, is becoming more and more restricted, particularly in view of the new technique of a sweeping delegation to the subordinate authorities "to do all that may be necessary to apply the statute in practice." Moreover, when it happened that the courts, still entangled in "liberalistic" concepts of law, questioned the validity of governmental policies conflicting with the existing common law, the Government sternly repressed such residues of independence by withdrawing whole classes of cases from the ordinary courts.[1] Thus the postulate of justice according to law is fulfilled to the letter if it is realized that the law is the will of one human being alone, and that justice is no longer shaped in conformity with ethical standards based on public opinion because public opinion is molded by the few at the top.

Organization of Courts

The most incisive change in the organization of the courts consists in the transfer of judicial sovereignty from the Laender to the Reich.[2] In the place of the former, separate Ministers of Justice of the Laender, at present delegates of the Reich Ministry of Justice, hold office in the former capitals. All judicial officers are officials of the Reich, and no longer of the Laender. The Prussian Ministry of Justice became the corresponding Reich Ministry. In the ordinary jurisdiction of the courts surprisingly little was changed. The traditional division into District Courts *(Amtsgericht),* Regional Court *(Landgericht),* Superior Regional Court *(Oberlandesgericht)* over which the *Reichsgericht* presides as Supreme Court of cassation (only on matters of law and not of fact), is retained. In all fairness it should be noted that few serious complaints are heard about the administration of justice in civil matters which do not touch on political problems, although the run-of-the-mill judge is eager to adorn his opinions with ref-

[1] This occurred twice in vitally important matters: first, when claims for "illegal acts committed in connection with the National Socialist revolution," were cut off (see law of December 13, 1934, RGB. I, p. 1235); a second time when the courts dared to side with the Protestant church against the totalitarian state (see law of June 26, 1935, RGB. I, p. 774).

[2] See *supra,* p. 454 ff.

erences to National Socialist ideology, whether it fits the case or not. Impartiality, however, may suffer one way or the other, if a party member or a Jew is involved.

Criminal Law

The situation is widely different in the field of criminal law. Special courts were created to deal with attacks on the regime and treasonable activities, including all offenses committed against the party. The dreaded People's Court *(Volksgerichtshof)*,[1] permanently established since 1936, is a revolutionary tribunal of the Star Chamber type. Only two of the five judges are trained in the law; the majority of three are lay assessors appointed by Hitler, at the suggestion of the Reich Minister of Justice, from among the Elite Guard and the party hierarchy "because of their special knowledge in the defense against subversive activities or because they are most intimately connected with the political trends of the nation." These courts are intended to terrorize public opinion by severity of punishments, secrecy of proceedings, and abrogation of most of the procedural rights of the accused, who has not even the right to choose counsel. Only the crimson-red posters eventually announce that the convicted has died under the axe of the executioner. In close connection with the Secret Police, the People's Courts try to ferret out opposition. Although its activities are shrouded in secrecy, it is known that from time to time widespread conspiracies are discovered and dealt with accordingly.

While, on the one hand, comparatively few inroads into the existing system of common civil law, except those motivated by the racial myth, were made by National Socialist ideology, the system of criminal law has been completely revolutionized. The liberal concept of the reformatory nature of punishment has been superseded by the principles of revenge on the part of the State and the determent of future criminal acts. Severity of punishment and harsh treatment of the convicted is a common feature of dictatorial governments, intent on protecting themselves from attacks and on demonstrating the "virility" of their philosophy. This holds true for political crimes proper, the range of which has been enormously extended under the Third Reich,[2]

[1] Law of April 24, 1934 (RGB. I, p. 369).

[2] Special mention should be made of the legislation for protecting the "purity of the race," designed to prevent sexual intercourse between Jews and "Jewish mixed offspring," and "Aryans," according to the Nuremberg laws of September 15, 1935 (RGB. I, p. 1146, 1147); see *infra*, p. 594 f.

as well as for common crimes. In the fight against what is called "professional criminals" *(Gewohnheitsverbrecher),* custody in concentration camps as well as sterilization is applied. "Preventive custody" *(Schutzhaft),* the legal term for commitment to a concentration camp, was formally legalized by a most incisive law of June 1935,[1] which also introduced punishment without law *(nulla poena sine lege).* Punishment must be meted out by the court for an act which is deemed in conflict with the "healthy sentiment of the people," even if no statute authorizing the punishment has been violated. What may constitute an infringement of the "healthy sentiment of the people" is to be determined only by the court. Justice as an instrumentality of political power has thus been degraded to the position of handmaiden of a political party. Moreover, according to the special instruction of the Ministry of Justice, "gypsies, foreigners, and persons inimical to the State, after having served their sentence or after acquittal [*sic*] by the court, are to be placed in the hands of the Secret Police for 'reforming' them further in concentration camps." [2] The Third Reich has put the clock of criminal "justice" back for centuries.

Professional Honor Courts

Finally, the judicial organization has been enriched by a large number of so-called Honor Courts, judicial agencies created in connection with the new social stratification of Germany into professional associations or "estates" *(Staende).* The exercise of a profession is considered a public duty, under the supervision of State and party. For the sake of a closer control and supervision in the interests of the totalitarian state, all members of the same professional activity are organized by statute into professional associations or guilds, membership in which is mandatory for the exercise of the profession and is legalized by a membership card or license. To each professional group or association an Honor Court is attached, which enforces specific professional ethics and punishes violations of the professional code by its members. Most conspicuous among them are the Social Honor Courts, established in 1934 by the Labor Code, the fundamental statute for organizing capital and labor under the Labor Front and for regulating the relations between the plant owner ("leader

[1] Law of June 28, 1935 (RGB. I, p. 839).

[2] The Protestant pastor Niemoeller who, after having been acquitted by the court of treasonable activities, was placed in a concentration camp, is one of the cases known outside Germany. It has been reported that Niemoeller, a former U-boat commander, volunteered for service after the outbreak of the war.

of the enterprise") and his workers and employees ("followers").[1] Among other professional Honor Courts may be mentioned those for the press (editors, reporters, and journalists); physicians; attorneys-at-law; business men; artisans; and even huntsmen.

The End of the Rule of Law

The organization and administration of justice under the Third Reich may be summed up by the statement that it attains its political ends by completely destroying the rule of law and by abolishing the regularized due process of law. Separation of powers, independence of judges, judicial control of administration, impartial efficiency of the civil service, a Bill of Rights, as safeguards against executive and legislative encroachments on the individual, and even the certainty of a written constitution—all these elements of the rule of law are overruled by the monocratic omnipotence of the "Fuehrer" and the National Socialist party. The judge is no longer the impartial dispenser of objective justice on the basis of law, reflecting the will of public opinion, but an instrument of political power. Similarly, as in the relations of Germany to other nations since 1933, in the relations of the State toward its subjects might is substituted by way of legal enactments for right. In no other field of human activities has German tradition been more completely revolutionized.

[1] See law "for ordering of national labor," of January 20, 1934 (RGB. I, p. 45) and *infra*, p. 525 f.

CHAPTER XXIX. THE POLICE

Modern revolutions may be spontaneous in their origin; once victorious, they become, true children of the technological age, mass-movements under scientific management. Since a totalitarian State, with its inherent inroads into private life and its required sacrifices on the part of each citizen, cannot count on voluntary adhesion through continued enthusiasm, consent has to be manufactured by constraint, through intimidation and terror. Terror is as much an ingredient of emotionalism as enthusiasm. The instrumentality for maintaining political power through coercion is the Police, in particular the Political Police (*Geheime Staatspolizei,* commonly known as the Gestapo).

Legal Position and Organization of the Police

The Gestapo as a separate political police was founded in April 1933 by Goering, then in charge of the internal administration of Prussia; it was made an independent department of the Prussian Government in November 1933.[1] In April 1934 all police forces of the Reich were centralized under Heinrich Himmler.[2] Formally, the Political Police is still under the Prussian Minister President (Goering); factually, Himmler, as *Reichsleiter,* is an independent supreme Reich authority, subordinated only to Hitler personally, if at all. Finally, the Political Police also became a self-contained system of justice under the orders and instructions only of Himmler and his nominal superior, the Prussian Minister President Goering.[3] The decree defines the Gestapo as an independent branch of public administration which is especially empowered to demand information from, and to give orders to, other agencies of the State. Actions taken by the Gestapo are beyond judicial or administrative control;

[1] Prussian laws of April 26, 1933 (*Gesetzessammlung,* p. 122) and of November, 1933 (*ibidem,* p. 413).

[2] Goering had wrested the police, after the seizure of power, from Frick, Minister of the Interior. When Himmler succeeded Goering, it was probably a move of Hitler to check the power of Goering.

[3] Prussian decree of February 10, 1936.

only a "complaint" is given to the accused which is decided without appeal by the Chief of the Political Police. No legal check on its activities exists, except by the "Fuehrer" himself and, nominally, by the Prussian Minister President.

The Secret Police as an organization is to be distinguished from the Elite Guard (SS). It is true that all higher officials of the Political Police are at the same time officers of the Elite Guard, wearing the uniform of the Black Guards. Many of these have been taken from the ranks of the SS. But the SS, although the instrument of execution for the tasks of the Political Police, has at the same time other functions only indirectly related to the fight against subversive undertakings. The SS of today is the official army of the regime, strictly separated from, and in competition against, the *Reichswehr,* whose loyalty to the regime was evidently not taken for granted. It consists of more than a quarter-million picked and fully trained men, with their own barracks and equipment, including heavy artillery, tanks, and gas. The standards of racial purity are particularly rigid for admission. Subjected to an intensified process of indoctrination and outwardly, at least, animated by unflinching loyalty to the regime whose existence rests on them, they constitute a Praetorian Cohort of unprecedented power, serving as bodyguard for the "Fuehrer" and the ruling party oligarchs, and as an army for the defense of the regime in case of civil war. It has been reliably reported that, since the beginning of the war, the SS has been considerably strengthened both in numbers and in equipment, and firing squads are active not only in conquered Bohemia or Poland but also in the yards of German factories when labor becomes restless. In spite of war-created patriotism the "home front" is as closely watched by the SS as is the West Wall by the regular army.

On the other hand, the Elite Guard executes the orders and policies of the Political Police, and does in general what may be called the dirty work, such as running the concentration camps, policing the conquered territories, and keeping the masses at bay in public demonstrations. The guiding brain of the Political Police, however, is a bureaucracy which bears as little resemblance to the terror it manipulates as did the immaculate person of Robespierre to the Terror of the French Revolution. It would be much more appropriate to liken the directing officials of the Political Police to the Prussian General Staff, from whose book it has copied many a leaf. They are well educated and academically trained gentlemen with an expert knowledge in the specific fields

of their activities. Much of the best talent of the younger generation has been attracted by careers in the Political Police. In efficiency and training they are a first-rate institution, a new elite, with an *esprit de corps* and ethical code of their own, devoted with indefatigable zeal to their task—admittedly an extremely capable group of administrators.

Activities of the Political Police

Empowered, by the law of February 1936, "to uncover and combat all tendencies and developments inimical to the State, and to take for this end all measures deemed necessary and expedient," the Gestapo has grown into a complicated and vast machinery, extending its cobweb over the entire nation, dealing with political, economic, and cultural matters as well as with objectives of penological character. It is more like a Government than an administrative agency, and maintains a staff of its own in many Government agencies. It controls citizens and foreigners within the Reich, and Germans abroad, maintaining officials or offices in most foreign countries. Refugees, and even foreign nationals known as opposed to the regime are under its supervision.[1]

As an organization of "scientific" terror, the Gestapo has little of the romantic spell of the heroic G-men. It is highly bureaucratized; even terror is bureaucratized. Some of the actual practices employed in the intelligence service for combating subversive trends may be listed here: control of incoming and outgoing mail, and of mail within Germany; supervision of telephone calls by wire-tapping or installation of secret dictaphones; espionage through hired and voluntary informers; uncovering the underground movement through spies and stool-pigeons; control of border traffic and passports; military and economic espionage and counter-espionage; expatriation of enemies of the regime living abroad. In addition, the Gestapo constantly checks on the activities and conduct of the party members themselves, particularly of the SA. No layer of the population and no section of the party is immune from interference by the Gestapo: judges, public prosecutors, the civil service, the police administration outside its own ranks, or the Elite Guards themselves. Not even the army and the leading Reichswehr generals are exempt from its sweeping powers. If well-substantiated reports are to be believed, the Gestapo holds even Reich Ministers and members of

[1] Violations of foreign sovereignty and jurisdiction are common. Numerous assassinations of enemies of the regime have been carried out in foreign countries.

the inner party directorate under close watch. The State is controlled by the party, but the party is controlled by the Gestapo. The Political Police is today in Germany the innermost core of power.

Scientific Terror

The concentration camp [1] is considered, inside and outside the German Reich, as the symbol of open terrorization. Seen from a more distant angle, the camps are merely the outward sign of an all-pervading, systematized, cold-blooded terror, integrated into the daily life of the nation, a myth of horrible reality. Scientific terror is as much psychological and preventive as physical and retributive. The regime prefers beating, torturing and other devices of mortification and humiliation to outright killing, although beatings frequently result in killings. Physical violence is only the materialization, in individual cases, of the potential violence applicable to all. Since the masses of suspects and malcontents, all of them potential enemies of the regime, cannot be "liquidated," each blow reverberates, each cry re-echoes thousandfold on those who are under the everlasting threat of being subjected to equal physical violence. Man of today is ready to die but he is deeply afraid of suffering. Intimidation and terror are thus technical devices for mass-control, part and parcel of government by constraint, instead of by consent. Terror is not only an unavoidable incident of political power, but its foremost and most effective instrumentality. Whenever emotional enthusiasm, nurtured by patriotic motives, is flagging, the gap is filled by deliberate and methodical terror. It is a method of defending the regime, directed against supporters as well as opponents, effective

[1] It seems superfluous to add here to the many authentic descriptions of the concentration camps. In September 1939 the names of at least 18 camps in Germany and two in Austria were known to the present writer, but probably many more exist. The larger ones have a capacity up to fifteen thousand; Sachsenhausen admits 22,000 prisoners. A conservative estimate puts the total number of persons confined at one time to concentration camps at over one and a half million. The inmates belong to the following classes, kept separate from each other and dealt with separately: (1) political prisoners (Socialists, Communists, liberals, and other political miscreants, including monarchists, members of the party and of the Elite Guard); (2) habitual criminals, actually or allegedly devoted to common crimes; (3) persons unwilling to work, mostly vagrants and workers refusing to accept assigned jobs ("work-dodgers")—evidently a large percentage; (4) political suspects, among them many persons who incurred the displeasure of the local bosses; (5) homosexuals (only since the purge of 1934 frowned at officially by the rulers); (6) "race defilers" (*Rassenschaender*), both Jews and "Ayrans"; (7) Jehovah's Witnesses (*Ernste Bibelforscher*), a religious sect with stubborn heroism reminiscent of the early Christians, worst treated of all—a surprisingly large contingent. Jews are in all classes, their number *in toto* being less than 15%. Lately the most numerous class has been composed of former party members.

through arbitrariness in application, suddenness in performance, varied designs of vengeance, helplessness of the victim, and inescapability of execution. Surrounded by spies, informers, zealots, and fanatics, the people live in an atmosphere of vague though ever-present terror, which even casual visitors rarely fail to observe.

SECTION IV. THE NATION AND THE INDIVIDUAL

CHAPTER XXX. THE "FOLKISH DOGMA" AND THE RACIAL MYTH

The Notion of the People (Volk)

The National Socialist doctrine and its translation into actual legislation draw strength from two mystical sources which, though unintelligible to non-believers in the political theology of the Third Reich, have to be accepted at their face value. One is the notion of the "Fuehrer" as the incarnation of the mission of the German nation, from which flow the supernatural powers for its fulfilment credited to him. The second mythological concept, closely related to that of the "Fuehrer," and in fact its complement, is that the people (*Volk*) are the ultimate source of power and the highest unit in the tabulation of national values.

Liberal rationalism conceived of the people as a union, in a given territory, of the inhabitants, who submitted voluntarily to the jurisdiction of the State. The State was considered as possessing an emotional and legal, rather than a biological, relationship to its citizens. In spite of the modern trend towards collectivism, which has eroded the notion of inviolate individual rights, the State retained an indestructible kernel of voluntary adhesion to the political society. National Socialism discarded deliberately the liberal notion of State and society by introducing into the concept of the people (*Volk*) pseudo-biological, pseudo-historical, and pseudo-metaphysical elements. Borrowing from current German philosophical doctrines of "existentiality" and "totality," it is contended that the nature of a nation or people is determined by the totality of its historical, political, and biological experience. A nation is qualified by the common consciousness of unity, of common objective values of the common past and the

common future, and, most decisive of all, of common descent or "race." Membership in a people is not a matter of rational choice left to the individual: it is destiny and, as such, inescapable, carrying with it duties and obligations not to be shaken off by voluntary act or shirked by indifference. Hence, Germans cannot lose, non-Germans cannot acquire, Germanhood.

The Notion of Race

The historical and spiritual elements constituting the notion of *Volk* may seem fairly intelligible. It develops into the mysticism of a political theology once it is enlarged by the implications of the race. Escape from the elusive notions of the individual becomes possible only by linking it to the "racial community" as the natural basis of the political society. The mystery of "community of descent" (*Abstammungsgemeinschaft*) is explained by certain mental and physical characteristics of the race.

The ideology of the race or, more concretely, the "community of blood and soil" (*Blut und Boden*), is the *leitmotiv* of the Third Reich, the foundation and capstone of its official indoctrination, from which all practical policies derive their ultimate justification. Race is the fundamental determinant in the formation and development of a people or nation. The myth of the race amounts, in brief, to the assertion that the pure race is the fountainhead of all creative values of life and history. Creative genius is less a quality of brains than of blood—that blood which flows in the veins of a pure undiluted race. Blood is a metaphysical as well as a merely biological notion and, hence, is incapable of rationalization. Race is destiny, and destiny is race. The true German nation is a community tied together indissolubly by bonds of blood and not solely by that common history and experience which usually molds heterogeneous racial elements into a nation. From these premises the National Socialist doctrine,[1] not unaware that different races exist and that they have become mixed, evolves a classification of races according to their physical and mental criteria, which is as involved as it is crude in its scien-

[1] The racial myth is not an original discovery of the National Socialists. It appears, in a more spiritual and transcendental manner, in Fichte, the German patriot-philosopher at the time of Napoleon, to reappear, after the exact science of biology in the nineteenth century had little use for it, in the popularized cultural anthropology of the Frenchman Count Gobineau, and of the naturalized German of English descent Houston Stewart Chamberlain, whose book "The Foundations of the Nineteenth Century" Hitler swallowed hook, line and sinker. The racial doctrine was fully expounded by its pontiff, Alfred Rosenberg, in his book (1925): "The Mythus of the Twentieth Century."

tific assumptions and conclusions. Races are not only different in blood and soul, but also unequal in value. Among all races, the Aryans [1] alone count; and, among the latter, the Nordics are the most eminent branch. Only the "Aryan" race is creative of cultural values. Aryan and Nordic were the Greeks, the Romans, and finally the Germanic people. They are the state-builders, the creators of perennial works of art, the trail-blazers in science and culture. Their main spiritual criterion is honor. Creative capacity is innate and is transmitted by blood alone. Only one who has the proper racial inheritance has the creative spirit. The Nazis admit that racial qualities are not always and invariably expressed in physical appearance; hence Nordicism, even if it assumes outwardly the criteria of another race, nonetheless manifests itself in the spirit of the person belonging to it—evidently a plausible explanation for the undeniable fact that some of the leaders of the regime conform not at all to the blue-eyed, blond, and tall Viking-type of the true Nordics.

Once it is assumed that the pure race is the highest of human values, the main objective of a race consists in keeping itself free from contamination by alien or inferior blood. This is the supreme task of the State, subordinated to and serving the purposes of the race. Mixture with inferior races, as world history shows, leads to political degeneracy and cultural decay. Hence the pure race of the Nordics has to free itself, by a forceful process of elimination, from infection with alien, inferior blood. Here follows one of the somersaults of the doctrine. Only contamination by the Negro and Jewish races is alien and dangerous; all other admixtures, though not to be encouraged, are permissible. Once the predominance of the race and the blood is established, the notion of the supreme importance of the soil naturally follows as an emotional and practical consequence. A pure race permeates with its spirit the soil on which it dwells and from which it springs. Here political motives are again helpful, since a stable, self-supporting, and strong middle class of prolific farmers is a bulwark against Bolshevism, which at the time when the race dogma was in the process of elaboration was still the arch-enemy of Nordics, Aryans and Germans alike.

It seems scarcely necessary to refute the mystical rigmarole of the National Socialist race doctrine. After thousands of years of intercourse and intermixture between members of originally different racial or ethnical stock, no pure race exists in Europe.

[1] The term "Aryan" was used before only as a term of linguistics.

Some nations may still reveal more preponderance of one definite ethnical stock than others; the Germans certainly do not belong to this class. Historically the racial myth is an outgrowth of unspirited romanticism. Philosophically it is similar to the class-myth of Marxism, the economic determinism of history, with which it has in common the fact that everything is explained in terms of one denominator. All this matters little. What matters alone is what the Germans believe or are made to believe. From this viewpoint, the racial theory, through its over-simplification, had an irresistible psychological appeal to the masses, which, because of their ignorance, admire science and erudition. The race myth is within the grasp of the lowest intellect. Without giving too much weight to psycho-analytical arguments, it helped to release the subconscious inferiority-complex created in the war-warped masses by defeat. Mr. Everyman discovered that, although economically poor, he was racially pure. The "Aryan," conscious of his racial superiority, was lifted above at least one section of the people, and the most envied at that—the Jews—as well as over the neighboring "races" whose land he coveted.

Practical Consequences of the Racial Myth

The practical consequences of the concepts of nation and race are obvious.

(*a*) *In Foreign Policy.* In the first place, the concept of the nation as the inescapable destiny of blood leads to the political postulate of uniting all peoples of German blood and race ("racial comrades") with the mother country. The racial twist applied to the liberal concept of political self-determination was the potent and almost irrefutable argument for joining politically the German minorities under foreign jurisdiction with the German Reich. Under this sign the "homecoming" of the Saarlanders, the Austrians, Sudetenlanders, Memellanders, Danzigers, was accomplished. The "call of the blood" was for a long time and is still the slogan for incorporating other peoples and their land if they are unfortunate enough to have Germans among their population, and for extending the claim of political control even to German minorities beyond the sea. The racial myth furnished the most convincing argument for German aspirations to world revolution.

Lately, however, with the rape of Czechoslovakia, by which an admittedly foreign racial stock was subjugated, the racial myth, heretofore substantiating the claim for the annexation of racial

comrades abroad, has been replaced by a novel mythology which sails under the flag of "living space" (*Lebensraum*). The notion, though recent as a device of dynamic activism, it also embedded in the National Socialist concept of the nation and the race. Again political purposes are put forward in a romantic frame of reference which utilizes skillfully popularized political geography (*Geopolitik*) for the purposes of power politics. By virtue of its racial superiority, the German nation is entitled to such "living space" as it needs for the realization of its historical mission. Any soil touched by the German genius in history belongs to Germany of right. A master-race is entitled, by history and destiny, to rule supremely over the inferior races of Central and Eastern Europe. Next to the Jews caught in the trap of the Third Reich, the hapless Czechs and the Poles were the first to become the objects of a laboratory test in political vivisection, the record of which is written in blood and misery untold. Thus the racial myth serves the claims of expanding the living space into "Greater Germany." Living space, as the sequel to race and nation, characterizes the second phase of Germany's bid for world power. While the race ideology as long as it confined its scope to Germans living in compact masses in neighboring states, was at least arguable, the notion of "living space" was bound to come into conflict sooner or later with the right to self-preservation of other nations. Already the claim is raised officially that the "living space" of Germany is to embrace all territories ever held in the course of history by Germans, a contention which may well be the ideological prelude to a revival of the First Reich in its vast European expansion, streamlined by the modern technological methods of despotism.

From the viewpoint of this fundamental dogma that foreign soil, once consecrated by the touch of the German race, must ultimately fall under German political jurisdiction, the re-patriation of German minorities abroad, as in the South Tyrol, the Baltic States and other most valuable outposts of Germandom *in partibus infidelium,* appears as a volte-face of the regime unparalleled even in the checkered history of its ideological principles. It serves as an indication of the sacrifices by which Hitler was compelled to buy the support of Stalin in his fight against the West.

(*b*) *Legislation for the Improvement of National Health.* Internally, the racial myth serves, on the one hand, as an excuse for virulent and implacable anti-Semitism, the foremost method of emotional "self-stimulation," already tested in its efficacy by

the rising movement, and, on the other hand, for introducing important measures of eugenics and for the improvement of national health. From the basic assumption of the holiness of the soil, far-reaching agricultural reforms, demanded as early as in the party program of 1920, have been enforced.[1]

On the whole, the Third Reich has done more for what it considers the correct eugenics to promote the purity of the race and for the improvement of national health than any other government. The successes in the Olympics in 1936 were hailed as achievements of the regime. In spite of lately visible effects of inadequate nutrition, the Germans are a healthy nation, the young people devoted to sports as much as everywhere. Public health administration, formerly belonging to the jurisdiction of the Laender, was taken over by the Reich as early as April 1933, and uniform health offices were established.[2] Despite the vagueness and uncertainty of the underlying biological and anthropological theories, commendable measures to promote national hygiene were subsequently enacted. Among them may be mentioned the following: Couples intending to marry must submit to the registrar a certificate from the public health officer showing that they are not affected with any mental or bodily disease which would prevent their having healthy offspring.[3] Early marriage and large families are encouraged by financial support and exemptions or release from taxation. Racial instruction and indoctrination is given a substantial share in education. Perhaps the most incisive and, in its ultimate value, the most disputed innovation, however, is a law preventing reproduction by persons afflicted with congenital diseases.[4] All practitioners are bound to report cases of hereditary disease to the health authorities. A new health tribunal, composed of one jurist and two medical assessors, decides whether a person complained against is to be subjected to sterilization or, since 1935, to castration. These measures may be taken against the will of the person affected. Mental diseases, as well as physical defects and deformities, entail sterilization because of their hereditary character. The revolting harshness of the law and, frequently, the excessive arbitrariness of the lower courts have evoked much bitterness both among the more responsible members of the medical profession and among the

[1] On these reforms, see *infra*, p. 533 ff.
[2] See Law of July 3, 1934 (RGB. I, p. 520).
[3] *Erbgesundheitsgesetz* of October 18, 1935 (RGB. I, p. 1246).
[4] Law "for the prevention of hereditarily afflicted progeny," of July 14, 1933 (RGB. I, p. 529, with numerous executory ordinances).

mothers of children threatened with being deprived of their family lives and much human happiness.[1] Moreover, the entire system of private law is permeated with the idea of racial purity and especially the codes of domestic relations and of succession have been revolutionized almost beyond recognition.

[1] The exact number of sterilizations already performed is not known; it is estimated at more than half a million, while about three million more are said to be ear-marked for treatment.

CHAPTER XXXI. THE POSITION OF THE JEWS UNDER THE THIRD REICH

No other policy of National Socialism has attracted world opinion and aroused world opposition more than the treatment of the Jews, which is in fact the cause and purpose of the racial myth. A factual summary of anti-Jewish legislation may help to elucidate the present position of the Jews in Germany and in German-controlled territories.

Before 1933

Jews had come to Germany with the Romans. Their history was varied, ferocious persecution alternating with periods of relative prosperity and security. Following the precedent of the French Revolution (Declaration of the National Assembly of May 28, 1789), at the beginning of the nineteenth century most of the German states accorded equal civil status to the Jews. The Emancipation Act of the North German Bund of July 3, 1869, became a law of the Reich in 1871.

However, civil and political equality thus conferred on German citizens of Jewish extraction was not identical with social equality. Many discriminations remained. Jews, except when baptized, were excluded from public office, the army, and professorships in the Universities. But in the atmosphere of bourgeois liberalism, intermarriage between Gentiles and Jews was not uncommon. In particular, the Prussian nobility, eager to refurbish their paled escutcheons, married Jewish wealth. On the whole, assimilation was well under way. Yet even after 1870 anti-Semitism was rampant and found expression in anti-Semitic parliamentary parties. During the last World War Jews could become officers in the lower ranks of the army, and contributed their full share to the bloody toll. The percentage of Jewish officers killed in action is higher than that of the corresponding categories of the "Gentiles." Full equality of Jews was established only by the Republic. They now entered even the higher ranks

of the civil service, and could be appointed to full professorships, while retaining their prominent position in finance and banking, in the theater, literature, and the arts in general. National Socialist assertions, however, that the Jewish element dominated the cultural life of the nation are as grossly exaggerated as the complaints of political radicalism among Jews. Although only the Left parties allowed them active participation in politics beyond casting their vote, their economic interests were determined by conservative leanings. On the whole, their social position was not much inferior to that of their co-religionists in England and France, but they never found access to the ruling class as in those countries.

Anti-Semitism of the National Socialist Program

Aggressive anti-Semitism soon became the favorite instrumentality of the National Socialist propaganda for stirring up hatred and emotionalism. The party program of 1920 contains, in numerous sections, demands for the complete elimination of Jews from social, economic, political, and cultural life. It is today the only plank of the platform wholly unchanged and fulfilled to the letter. Anti-Semitism has been aptly described as "the socialism of the fools." It blamed the Jews for the lost war, the calamitous treaty of peace, and the economic difficulties of the post-war adjustment. By a facile trick, Jews and Marxists were identified, although a very small number of Jews were prominent in the Socialist parties. But the participation of Russian Jews in the Bavarian Soviet Republic of 1919 and the policy of the Prussian Government, too liberal in admitting Eastern Jews to Germany, added fuel to the fire. Hitler himself had received the anti-Jewish determinant of his future policies during the impressionable years of puberty in Vienna, where the radical anti-Semitism of Schoenerer and of Dr. Lueger, then Mayor of Vienna, taught him the art of propaganda through exploitation of the anti-Semitic mass prejudices. In some of the half-delirious divagations of *Mein Kampf,* Socialism and Marxism appear as Jewish instruments for killing the blue-eyed fair-haired German knight in distress. He adheres to the "Protocols of the Wise Men of Zion," allegedly a plan for Jewish world domination through World Revolution.[1] A particularly unsavory element in this poisonous

[1] The "Protocols of Zion" is an anonymous invention of Russian origin, copied from a political pamphlet directed, in the 60's of the last century, against Napoleon III. It was exposed as a crude forgery in a libel suit in Switzerland in 1936.

propaganda was the invocation of sexual envy, which now forms a part of the official National Socialist education and is found in every Nazi primer.

Anti-Semitic Policies of the Third Reich

In the realization of the anti-Semitic program of the regime, three stages may be distinguished. The measures were taken step by step, less because German Jews and world opinion had to be accustomed slowly to this return to the Dark Ages, than because of the necessity of not disturbing too much economic life. In retrospect, it appears that whenever a slackening of popular support was felt, the anti-Semitic screws were driven deeper into the living body of helpless Jewry.

(*a*) *Elimination from Public Office.* The Enabling Act of March 24, 1933, empowered Hitler to overrule, by Government decree, the Constitution and thus to set aside the equal protection of law and the equality of status, guaranteed in the Bill of Rights, of Jews and other persons deemed enemies of the regime. The statute "on the restoration of the professional service" [1] removed "non-Aryans" from public office. "Non-Aryans" were characterized as persons having at least one Jewish grandparent —the famous "grandmother clause." Exceptions were made at first for "non-Aryan" officials who had served since August 1, 1914, or who had fought during the war in the front line, or who were fathers or sons of front-line fighters killed in action. Officials with more than ten years of service received a pension.[2] This solemn legislative promise was revoked in 1935 in the characteristic Nazi manner of repudiating explicit promises whenever it suits them. All Jews without exception were deprived of their ability to qualify for public office. The Public Official Act of 1937 [3] decreed that only citizens are qualified for public office, thus permanently excluding Jews. Identical disqualifications were extended to Gentile partners of Jewish wives, an effective pressure to enforce dissolution of mixed marriages. After January 1, 1936, no Jewish official (including judges, academic teachers of all ranks, employees of state-controlled railroads, banking institutions, and public corporations) remained in office.

[1] Law of April 7, 1933 (RGB. I, p. 175).

[2] This privilege has not yet been withdrawn, even since 1935, when the exceptions for front-line fighters, etc., were revoked and all remaining Jewish officials dismissed. It is one of the few bright spots in the dark picture of the outlawry of the Jews.

[3] Law of January 26, 1937 (RGB. I, p. 39), par. 26.

(*b*) *Purification of the Liberal and Cultural Professions.* Disqualification because of Jewish descent was forthwith extended to all professions "affected with public interest" (*Träger einer öffentlichen Aufgabe*). Jewish descent as disqualification, subsequently enlarged with German thoroughness to the most unimportant occupations (such as inspectors for butcher's meat), embraced in due course lawyers, doctors, veterinaries, notaries, apothecaries, pharmacists, public accountants, tax consultants, and auctioneers. No profession even remotely connected with public service was overlooked. After January 1, 1938, no Jew remained in any one of the trained professions or will be admitted in future. Admission of "Non-Aryans" to educational institutions was officially limited to 1.5% of the total student enrollment.[1] In practice, and in contradiction to the letter of the law, no Jewish students were admitted to any higher institutions of education. Where Jewish pupils remained in elementary schools, party pressure on fellow-students made life so miserable for them that they were compelled to attend Jewish elementary schools.

Less open, though no less effective, was the process of excluding Jews from cultural life. The device applied was the system of licensing in guilds and professional associations, which makes the exercise of a profession dependent on possession of a membership card.[2] This was utilized to squeeze out political nonconformists and Jews. Jews were denied membership from the start.[3] The same disqualifications apply to "Aryan" partners of mixed marriages. Editors, publishers, and leading officers of publishing corporations must even prove their Aryan descent down to 1800.[4] At present the cultural life of German Jews moves within the narrow precincts of the Ghetto. Jewish artists may appear only before Jewish audiences, from which "Aryans" are banned. Jewish journalists may be employed only by the few papers of the Jewish press. Presentation of the works of "Aryan"

[1] See Law "against the overcrowding of German schools and higher institutions of learning," of April 25, 1933 (RGB. I, p. 225).

[2] See *infra,* p. 537.

[3] For example, the law on the Reich Chamber of Culture (of November 22, 1933 [RGB. I, p 661]) declared exercise of any creative cultural activity dependent on membership in one of the affiliated corporations of public law under control of the Ministry of Propaganda, embracing music, art, theater, film, radio, lecturing, as well as writing, press, and journalism. Admission can be denied or revoked "if facts exist from which it may be deduced that the applicant does not possess the necessary qualifications for the exercise of the profession." Jews were officially declared unsuited, regardless of professional efficiency.

[4] See Editors' Law (*Schriftleitergesetz*) of October 4, 1933 (RGB. I, p. 713).

composers or authors is prohibited.[1] Of course no work of a Jewish author or composer can be performed for "Aryans."

(*c*) *The Nuremberg Acts.* The decisive step in the outlawry of the Jewish element was taken by the so-called Nuremberg laws of September 1935—the Act "for the protection of the German blood and the German honor" and the Reich Citizenship Act.[2] The gist of these statutes, unprecedented in modern history, is that they deprive the Jews of citizenship and political rights, make sexual intercourse between Jews and "Aryans" a crime, and finally define authoritatively what constitutes a Jew.

In conformity with the racial myth, the regime applied from the beginning the criterion of Jewish descent irrespective of the actually professed religion. Through intermarriage, with or without simultaneous baptism, the number of part-Jewish people was at least equal to those of pure Jewish ancestry. What constitutes a Jew was defined in a number of hair-splitting legal distinctions which a regime with a greater sense of humor would certainly have called "Talmudic."

Jews are defined [3] as persons with four or three Jewish grandparents. A Jew is also a person with only two Jewish grandparents, provided he professes the Jewish religion or is married to a Jew or a Jewess. Half-Jews or quarter-Jews are styled "Jewish mixed offspring" (*Mischling*). Marriages concluded after September 15, 1935, between Jews and "Aryans" are illegal, even if concluded outside the German jurisdiction. Partners in such marital bonds are threatened with penal servitude. No marriage can be concluded without full proof of "Aryan" descent on both sides. "Ancestry research" (*Sippenforschung*) has become a new "science" and an industry. Moreover, sexual intercourse between Jews and "Aryans" is a new crime (*Rassenschande*), even if committed by German nationals abroad. The tendency of the new law is to decrease the stock of Jewish blood in the German population. Hence, quarter- or half-Jews may not marry members of the same class, but the former may enter into marital relations with an "Aryan" partner provided that he secures permission of the Ministry of the Interior. From such mixtures no increase of the

[1] The operas of Richard Wagner, for whom half-Jewish descent is often claimed, are, of course, not among the permitted works.

[2] *Gesetz zum Schutze des deutschen Blutes und der deutschen Ehre,* and *Reichsbuergergesetz,* both of September 15, 1935 (RGB. I, pp. 1146, 1147), followed by an endless stream of "executory ordinances," the interpretation of which fills the columns of legal journals and occupies much of the time of the criminal courts.

[3] The definitions are found in the First Executory Ordinance for the Reich Citizenship Act of November 14, 1935 (RGB. I, p. 1333).

Jewish stock is to be feared. Male violators of the law are heavily punished, the Jewish partner being regularly sentenced to penal servitude. After having served their term, they are left to the tender mercies of the Gestapo in the concentration camps. Finally, another humiliating provision forbids female Germans below the age of 45 to serve in Jewish households. The objective of this provision, as of the whole legislation, was to make social contacts of any sort between Jews and "Aryans" impossible, since experience had shown that Germans could be discouraged only by draconian laws from cultivating their Jewish friends.

In addition, the Reich Citizenship Act, another of the Nuremberg laws, barred Jews from citizenship in the Reich, with the attendant loss of participation in political rights, such as voting in elections and plebiscites, or flying the German flag. Jews and "Jewish mixed offspring" are only "nationals" of the Reich.[1] Denial of these privileges was perhaps less onerous for Jews than the regime may assume. But they are excluded also from military service [2] and from the Labor service, though liable to conscription for manual labor. In order to make conspicuous those Jews who have the effrontery to look "Aryan," they must present an identification card testifying to their Jewish character whenever they have contacts with authorities of State or party. Moreover, they must give to their new-born children one of a limited number of first names which the regime considers genuinely Jewish. The list contains such names as Isaac, Benjamin, David, and Abraham. Perhaps the inventors of this ingenious device for humiliation have never heard of Isaac Newton, Benjamin Franklin, David Hume or Abraham Lincoln. All Jews must add to their first names Israel or Sara. Permission to travel abroad is no longer granted unless on promise never to return.

(*d*) *Elimination from Economic Life.* Barred in former times from the crafts, farming, and the service of the State, Jews had concentrated on trade, commerce, and more lately on industry. After the seizure of power, a procedure of indirect confiscation of property called "Aryanization of Jewish industrial and commercial undertakings" was organized. The favorite method consisted in confining the owner of the plant (or the principal shareholders) in a concentration camp until he signed away his property and holdings, or in placing all kinds of obstacles, such as

[1] See *infra,* p. 514.

[2] Defense Act of May 21, 1935 (RGB. I, p. 609). It seems that the army command also called up Jewish reservists during the crisis preceding the outbreak of the war. However, the report cannot be verified.

denial of raw materials, or rigorous and arbitrary execution of tax laws, in his way until he turned over his property to a Nazi competitor at the price dictated by the local Nazi boss. Without even the pretense of legal justification, Jewish employees were dismissed because their presence in the store or plant "disturbed the peace of labor." Excluded from the Labor Front, they could not find employment except in the declining Jewish business life. On the other hand, the method of boycott which, officially supported by the party, at first seemed most promising, failed to draw fire. In spite of the picketing of Jewish shops by the SA, pillorying in the Nazi press, and open violence, the German customers remained faithful to their Jewish stores. In smaller towns and villages, it is true, the local party stirred up so much hatred and violence that Jews could not maintain themselves. But in the large cities an avalanche of propaganda could not prevent a goodly number of long-established Jewish business undertakings from still prospering. For some years even the Jews deluded themselves in the belief that the regime, after having barred them from public life and the professions, would allow them a modest existence in economic life.

In order to remedy this unforeseen situation, the regime began, in 1937-38, by statutory provisions, to drive the Jews from various economic professions. Moreover, an intricate legislation cropped up for determining what constitutes a "Jewish business." A business was considered Jewish if more than one-fourth of the capital stock or of the shares were owned by Jews. Efforts to conceal the Jewish character of a business were punishable by penal servitude.

The Final Destruction of the Jewish Community

All these measures of what is the most powerful state on earth, if one is to believe the Nazi spokesmen, against a helpless minority were only the prelude to the final blow. In April 1938, on the basis of an authorization under the Four-Year Plan, all Jewish property inside and outside Germany had to be registered with the authorities.[1] The purpose of this huge inventory became evident when, in November 1938, a young Polish Jew, desperate over the expulsion of his parents from Germany, killed an employee of the German legation in Paris. Beginning on the night of November 9/10, all over Germany and Austria occurred a

[1] Ordinance of the Commissioner for the Four-Year Plan for the registration of Jewish property, of April 28, 1938 (RGB. I, p. 414).

"spontaneous outbreak of the people's wrath." Organized by the party, the Gestapo, and the Ministry of Propaganda, troops of Hitler Youth, led by members of the SA and SS, or their school teachers, destroyed systematically every single Jewish shop and store in every town and village, burned and dynamited every single synagogue in Germany and Austria—528 in all,—desecrated the holy scrolls, and manhandled the rabbis. Jewish homes were systematically pillaged and smashed. Since the burning and sacking of conquered cities in the Thirty Years' War, no similar act of official vandalism has been recorded. About seventy thousand Jews of all ages were thrown into concentration camps which, in the following months, showed an unprecedented death rate. To add insult to injury, an ordinance was issued compelling the Jewish owners to pay out of their own pockets for the repairs of their destroyed property. Insurance claims arising from the destruction of property, instigated by State and party, were declared forfeit to the State. Another ordinance of the same day imposed on German Jewry collectively an "atonement fine" of one billion marks, or four hundred million dollars at par. The death of the German official in Paris was only the pretext for the long-planned confiscation of Jewish wealth. The inventory of Jewish property had not been in vain. In mobilizing the demanded cash payments, the Jews were compelled to liquidate real estate, shares, and other holdings for a song; while their property in precious metals and stones, in works of art, had to be surrendered to the State at arbitrarily fixed prices. All money had to be deposited in banks from which the owners could draw only limited monthly sums. More than half the property accumulated by generations of intelligent and industrious people was thus confiscated by the regime.

In order to prevent any possible recovery of the Jewish community, another ordinance was issued,[1] which prohibited for Jews, after January 1, 1939, ownership and operation of all retail and wholesale businesses and the occupation of independent artisan. No longer can a Jew be "leader of the enterprise" in terms of the Labor Code. Leading Jewish employees still in employment had to be dismissed. Jewish shops were only partly "Aryanized," many of them were closed down. Finally, Jews were excluded from receiving public assistance or relief and, deprived of their livelihood and of the greatest part of their possessions,

[1] Ordinance "for the elimination of Jews from economic life," of November 12, 1938 (RGB. I, p. 1580).

were thrown upon their own resources. Gleefully the official press organ of the Elite Guard announced that now the day had come when impoverished Jewry "would sink into criminality and could be wiped out by fire and sword." The next blow was dealt to the economic existence of the German Jews by a measure of July, 1939.[1] All Jewish organizations were incorporated into one Jewish Union which bears financial responsibility for the maintenance of destitute Jews. A compulsory fund is created to which all Jews have to contribute before emigrating. The Union runs all schools, Jewish students no longer being admitted to any other. Only training for emigration is permitted.

The Jew in the Ghetto

At the present moment, the position of the Jew in Germany is pathetic beyond description. Barred from all remunerative professions, unable to find work, stripped of most of his property, relegated to assigned quarters or houses, excluded from all cultural amenities such as museums, libraries, theaters, concerts and shows; forbidden to show himself in certain streets and parks, or to attend restaurants or coffee-houses, he can hope only for emigration. Emigration, however, amounts to complete spoliation by taxes, fines, and contributions of what remains of his property. Penniless in the most literal sense of the word, he may seek refuge in foreign countries most of which close their borders against him.

But the German Jews who, as a body, have enriched civilization during centuries as much and more than any group of similar size, have not yet emptied the cup of bitterness to the last drop. After the conquest of Poland the masters of the Third Reich created a veritable Ghetto of an unprecedented scale by carving out, from the prostrated body of Poland, a small strip of land south of Lublin, called the "Jewish reservation." Into this area of less than fifty square miles the Jewish population of Austria, Bohemia, and Moravia is corralled and ordered to live on the poorest of soils by the sweat of their brows. Being mostly intellectuals or white collar workers without previous experience in agriculture or handicrafts, without money, tools, seeds, or cattle, they are left to their fate. Those who survive the raging epidemics will be finished off by starvation. Once this first experiment in mass execution without executioner has been carried

[1] (10th) Ordinance in execution of the Reich Citizen Act, of July 4, 1939 (RGB. I, p. 1097).

through successfully it will be the turn of the Jews of Germany proper, for the time being waiting for the death sentence in panic-stricken apathy.

The German People and the Racial Myth

It is perhaps premature to draw definite conclusions, but there are indications that the anti-Semitic policies of the regime have begun to defeat their purpose, at least as far as the mass of the common people is concerned. To many of the responsible Germans, National Socialism for the first time appeared in the destruction of the Jews as Brown Bolshevism without mask. If confiscation applied to the Jews occurs in peacetime it may befall in wartime the Catholic church or capital in general. During the last year the German nation has received an overdose of the racial myth. With the exception of the youth whose minds have been poisoned by racial indoctrination, perhaps beyond repair, it should be noted that the much vaunted "race consciousness" plays no conspicuous role in the daily life of the people. Particularly the notions of "blood and soil" have not yet been integrated into the popular mind. By the bulk of the people the race dogma in general is recognized as an artificial political invention rather than as a congenital ingredient of national life. Having eliminated the German Jews as the tangible objective of the racial myth, the regime tries already to focus the hatred of the masses suffering under the strain of a prolonged war on "World-Jewry" and the "Jewish pluto-democracies" of the West. But it is more likely than not that this weapon of emotionalism, once the sharpest in the armory of the regime, has become blunt from use in too destructive a mood against the German Jews. It is comfort in misery at least that the German Jews cannot be held responsible even by the Nazis for the outbreak or for the conduct and outcome of the present struggle.

CHAPTER XXXII. THE INDIVIDUAL AND THE NATION

Duties Instead of Rights

Deification of the nation as the highest value has changed fundamentally the position of the individual. While the Weimar Constitution placed too much emphasis on rights and too little on duties, the Third Reich knows only of duties, and of no individual rights for its citizens. Individual rights are no longer compatible with the exactions of the totalitarian State, which extends its planning activities over the entire nation. The "racial comrade" (*Volksgenosse*) has only duties; from the outset his individuality is determined by his inescapable "location" as a member of the racial community. The State, so the doctrine contends, has no interest in protecting individual rights of the personality. Thus the Third Reich does not recognize individualities, but only types or functions, such as the soldier, the farmer, the worker, the official, the childbearing mother. Fulfilment of personality is found in complete identification with the function assigned to a person by the State. The totalitarian character of modern dictatorship expresses itself most conclusively in the radical denial of individual and personal rights, so that in practice what is not commanded is forbidden. However, the break with the past was less radical than it may appear. In the last years of the Republic the frivolous misuse of powers by the Government, owing to the famous emergency Article 48, which allowed suspension of even the seven fundamental civil rights, made such inroads into the popular consciousness of their inviolability that the present regime cannot be blamed for continuing an established practice. The Ordinance enacted the day following the Reichstag fire of February 1933,[1] suspending for an indefinite time the seven fundamental rights of freedom of person, sanctity of domicile, privacy of mails, freedom of public opinion, assembly and association, and the guarantee of private property, in their totality

[1] Ordinance of the Reich President, of February 28, 1933 (RGB. I, p. 83).

the foundation of the liberal State under the rule of law, is today, after seven years of Nazi power, still in force. Moreover, the Enabling Act of March 1933 placed all remaining individual rights at the mercy and discretion of the Government; so much so that an entirely new concept of equality could be introduced in legislation and administration. Equality, as interpreted by the National Socialist doctrine, means that persons and social situations are unequal by nature and circumstances and may be treated differently by the State whenever expediency or the interests of the regime may demand. Consequently, whatever action the State takes, it is never arbitrary. Or, as the ubiquitous slogan of the regime formulates the situation: "Common weal has precedence over private weal." Justified from this viewpoint are all the totalitarian policies of National Socialism: the monopoly of the NSDAP, as well as discrimination against Jews, political enemies and non-conformists, the preferential treatment enjoyed by partisans in political and economic life no less than the differential treatment accorded each profession within the frame of neo-feudalization of the social and economic life in the Service-State.

Public Opinion

Most important, perhaps, is the attitude of the regime towards the freedom of public opinion. One remembers the strange concept of the "subjective" will of the people,[1] which may be in conflict with the "objective" will expressed and revealed by the "Fuehrer" alone. The party oligarchy arrogates to itself, therefore, the right of guiding and molding public opinion in order to make it conform to the "objective" will of the "Fuehrer." Public opinion is controlled by, and subordinated to, the aims of the regime. Press, radio, theater, and all kinds of artistic, cultural, or scientific expression are regimented and controlled. Conformity to the tenets of the regime is achieved by withholding undesirable information from the people as well as by instilling into them the information deemed desirable. The same principles guide education. The result is that freedom of public opinion in the Third Reich implies freedom to print and to read what the Ministry of Propaganda considers useful nourishment for the public mind. Technically this aim was easily reached through the system of licensing in the statute "on editors." [2]

[1] See *supra*, p. 446.
[2] *Schriftleitergesetz* of October 4, 1933 (RGB. I, p. 713).

Without the membership card, exercise of the journalistic profession is not permitted. Prohibition or censorship becomes superfluous because no writer threatened with expulsion would dare to offer opposition. The National Socialist doctrine eulogizes compulsion by declaring that the press has acquired a new responsibility toward the State. Yet in spite of rigid seclusion the German public is not entirely cut off from objective information. A mysterious "grapevine" of news exists nurtured by the foreign press and by broadcasts and letters from abroad, and a sort of "catacomb-literature" has evolved which people trained to read between the lines readily understand. Even under war conditions, to judge from the experience during the last World War, such sources of information may not dry out entirely.

Private Property

A similar change took place in the concept of private property. Here the convergence of policies of Bolshevism and National Socialism became clearly visible long before Hitler and Stalin aligned themselves officially. Freedom of contract, inviolability of private property, and freedom to dispose of one's estate after death—the pillars of social life under liberalism—are subjected to deep-reaching restrictions in the interests of the totalitarian State. Although the National Socialist program of 1920 pays lip service to the sacrosanctity of private property, in the actual practice of a State under military economy tenure of property depends on the use which the owner makes of it. Property is only on trust for the community, and the State may prescribe for the farmer how to use his soil, as well as for the industrialist how to use his plant. The weight of totalitarian exactions crushed free disposition of property. Under the same token, in a large number of statutes compensation for restriction, withdrawal, or confiscation of property and property rights is explicitly excluded. Land has been claimed for military and similar purposes. Regulation of production, price control, and marketing requirements hedge in the free use of property for farmers and industrialists. Capital and labor are invested and employed wherever and whenever economic planning dictated by political or military interest may require. Property may even become forfeit if the owner fails to make use of it as the State demands. Whenever the owner is deemed to have violated the obligations springing from the trust of the community, he loses his property by way of punitive confiscation.

Citizenship

Citizenship in the Third Reich has been affected by the suppression of the statehood of the Laender, by the fight against opposition, officially styled "enemies of the State" (*Staatsfeind*), and last but not least by the racial myth.

Reich Citizenship

Formerly a person was first a Prussian, a Bavarian, or a Saxon; and, by virtue of his nationality in one of the Laender, he was automatically also a German citizen. After sovereignty had passed from the Laender to the Reich in 1934, the situation was reversed. At present only uniform nationality as citizen of the Reich exists. The Laender authorities handle matters concerning nationality in the name, and by delegation, of the Reich. For the rest the pre-War statute on citizenship, of 1913, is still in force, since it was based, in conformity with German tradition, on the principle of descent (*ius sanguinis*) and not of the place of birth (*ius soli*). German citizenship is acquired in the main by birth from German parents, by marriage of a foreign wife to a German husband, and finally by naturalization. No minimum requirements of residence or legal titles for becoming a German citizen exist: it is a matter of administrative discretion of the Ministry of the Interior. Before the annexation of Austria and the Sudetenland, a considerable number of rebels and traitors of these countries were naturalized as a reward for their political services. Ever since the regime had seized power re-patriation of Germans from abroad was encouraged officially even if they had become foreign nationals.

After the conclusion of the pact between Hitler and Stalin in August 1939 it became compulsory for people of German stock residing in the Balticum and in the Western parts of Soviet Russia to transfer themselves to Greater Germany. Similarly, the German-speaking population of Italian South Tyrol is forced into migration to the Reich by an arrangement between Hitler and Mussolini through which the strategically important region South of the Brenner-Pass,—incidentally a land second to none in genuinely German character—is drained of an Irredenta potentially dangerous to Italy. An ethnical consolidation on a gigantic scale is in progress. The new "migration of the peoples" has no parallel in modern history; the exchange of populations between Turkey and Greece after the war of 1922 was based on mutuality while

the transfer which is under way at present is confined to the Germans alone. The new citizens are well received by the Reich and new homesteads, workshops and other professional opportunities are assigned to them from which the former Czech or Polish owners have been forcibly ejected.

Deprivation of Citizenship

Much more was changed in relation to the loss of nationality. In the first place, citizenship can no longer be waived by voluntary act. Withdrawal from German nationality is possible only if granted by the authorities. On the other hand, the Reich frequently inflicts denial of citizenship as a punishment. Naturalization when granted between November 9, 1918, and January 30, 1933, can be revoked if the citizen is deemed "undesirable," mainly for political or racial grounds.[1] In addition, German nationals residing abroad may be deprived of citizenship if their conduct outside the jurisdiction of the Reich is deemed detrimental to German interest, or if they refuse to return on request, or fail to fulfill their military duties. At the same time, confiscation of the property of such persons is permissible. Expatriation is frequently used for the sake of expropriation. A large number of German nationals, mainly emigrated "Non-Aryans" and political dissenters, have been deprived of their citizenship and their property. The list of notable men in this category is headed by Thomas Mann and Albert Einstein.

"Citizens" and "Nationals"

Finally, the Reich Citizenship Act of 1935, one of the Nuremberg laws, announced a seemingly fundamental distinction between full-fledged citizens (*Reichsbuerger*) and mere "nationals" (*Staatsangehoerige*). Only a person of German or "racially similar blood," "who proves by his conduct that he is willing and capable of serving loyally the German national State" is a citizen. On the other hand, German nationals or subjects are described by a subtle definition as those "who, while being members of the protective union of the German Reich, are accordingly under special obligation towards the same." As would be expected, on closer inspection this high-sounding distinction served exclusively the purposes of anti-Semitic discrimination. Jews were the only cate-

[1] Law on the withdrawal of naturalization and the forfeiture of citizenship, of July 14, 1933 (RGB. I, p. 480); some tens of thousands, mostly Eastern Jews, were de-naturalized.

gory struck by the law. They are not citizens. No other case is recorded of a person's losing his nationality because of racial incongruity. Nor has anyone thus far received the Reich citizenship certificate promised to full-fledged citizens. All those, except Jews, who possessed, on the day of the enactment of the law, the right to vote for the Reichstag or acquired it thereafter, are considered full citizens. To treat Germans other than Jews as second-rate citizens, if such a division for political reasons were feasible, would have gravely endangered the much-advertised "unity" of the German people and widened the existing cleavage between party loyalists and other Germans.

Foreign Minorities Within the Jurisdiction of the Reich

When Germany established a "protectorate" over the remainder of Czecho-Slovakia (Bohemia and Moravia, and Slovakia, respectively), German citizenship was bestowed only on those former Czechoslovakian citizens who were racially Germans or who recognized Germany as their mother-country. They occupy a privileged position, but at the same time they are placed under German courts for such crimes as involve German law. The twelve or more millions of Czechs and Slovaks are considered as nationals of their respective territories. Their actual position is undefinable at present. From the viewpoint of Germany, they occupy a place between Germans and Jews, and they are granted such rights as fit the expediency of the German master-race for which they toil.

Worse if possible is the lot which the conquerors held in store for the Poles in both the Polish territories annexed by the Reich and in the so-called "remainder-State." Their "legal" status, it can be stated without exaggeration, has been brought down to the level of semi-civilized natives in a colony. They have no rights except those which the authorities may grant them. One illustration may suffice. Polish employees and workers are entitled to only half or less of the wages paid to Germans for the same labor in the same locality.

Finally, it may be remembered that within Germany there still live a considerable number of foreign minorities, particularly the Poles and Danes in Germany proper, and other nationalities in what was formerly Austria. Here even the National Socialist doctrine admits that the despised Weimar Constitution is still in force, guaranteeing to all political minorities full protection and preservation of their cultural and linguistic development. In

practice, however, although Germanization is officially deprecated, the treatment of such minorities depends on the power of the neighboring country to resist Germanization. Moreover, the Reich has declared that foreign minorities openly or clandestinely aiming at dismemberment of the Reich, indulging in Irredentism, or cutting loose from the Reich, automatically forfeit its protection and may be dealt with at its discretion. Self-preservation takes precedence over the respect for foreign minorities. Self-determination evidently has a different ring when applied by or when invoked against the Third Reich.

SECTION V. THE SERVICE-STATE

CHAPTER XXXIII. THE "SERVICE FRAMES" (DIENSTORDNUNGEN)

Totalitarian Organization of Daily Life

Under the Third Reich the German citizen ceases to be a private individual. The range of private action has been narrowed, the sphere of State action has been enlarged, to such an extent that he has become de-personalized. He is nothing but an infinitely small part of the cogwheel machinery of the totalitarian State. Obviously, the hold over the people will be safer if the party can bore its way into economic institutions and control the actions of the individual as well as his mind. The result is that the German is never left alone, that he is always one among many other human beings living in a similar condition of submission. Political domination of the movement over the masses can entrench itself only if it infuses itself into the channels of daily life by organization, regimentation, and control. Moreover, since 1935, penetration of the totalitarian apparatus into economic life has increasingly served the purposes of war preparedness prerequisite for the bid for world power.

Certainly the apparent success of the process has been facilitated by the "herd instinct" engendered among Germans by tradition and education. As a member of an organized and commanded mass, the individual feels relieved from responsibility. His sense of social values is enhanced by co-operation and organization, in which he takes a national pride. On the other hand, the constant attention paid by the State to the individual instills into him a feeling of security and the consciousness that if he does as he is told he is safe in his profession and will win social acclaim. A good deal of what has been justly observed as the

"rejuvenation" of Germany under Hitler and the revival of self-confidence springs from this reciprocal attitude between State and citizen who, if he compares his lot today with the utter desolation and loneliness in the depression years before 1933, may honestly think that the new values of stern paternalism are not too dearly bought.

Thus, the position of the German citizen under National Socialism is determined generally by status and not by any voluntary contract individually arrived at. From the cradle to the grave he is compelled to pass through the various frames of service (*Dienstordnungen*) and neo-feudal organizations (*Staende*) that the State has provided for him. Beginning with his education in the Hitler Youth, he moves into actual service for the State as a member of the labor service and the armed forces. Finally, whatever profession he may choose, he becomes a member of the compulsory occupational organization indispensable for the exercise of his calling. Rare indeed is the man who can afford to remain outside as a mere onlooker. Branded as a parasite, he would soon find himself an outcast from the stream of social life. Collectivization of society has reached a maximum unequalled in any other modern state, with the possible exception of Russia. Seen from above, Germany appears to be covered with overlapping circles of economic organizations and service frames, embracing all the strata of the population under the totalitarian control of State and party fused into one. These service frames are functional as well as educational, partly for purposes of party indoctrination, partly for imparting to the individual a sense of dependence on the whole, and *vice versa*. The essence of the new feudalization consists in the fact that the individual cannot choose, but is bound by public duty to belong to one of the service frames. Some of them—such as the army and the civil service—are traditionally integrated into the State machinery; others—such as the professional associations—were originally party institutions, and were afterwards taken over by the State; still others—such as the labor service and the huge professional organizations of the "estates"—are new creations of the regime run by the party in the name of the State.

Character of the Public Service

Since participation in a service frame and membership in one of the occupational organizations, stripped of all voluntary or contractual implication whatever, is a public duty, it is conceived

of as demanding a special kind of relationship to State and party which is styled "loyalty" (*Treue*). This is an almost untranslatable term implying fidelity as well as devotion and sacrifice. It goes beyond professional duty or efficiency. It is intrinsically mystical, transcendental, romantic, and is part and parcel of the political theology of the regime. Loyalty is offered to the person of the "Fuehrer," to whom each individual member of a service frame is—or should feel himself—bound. Breach of loyalty is treason to the "Fuehrer." This loyalty is made more real by the assumption that "Fuehrer" and "followers" (*Gefolgschaft*) are tied together mutually, transforming an otherwise soulless mechanism into a living "community" (*Gemeinschaft*), under orders, discipline, devotion, and comradeship, something described as very virile, very inspiring, and based on obedience as much as on confidence. How much of this word-magic is real, or how real is the weariness with which the average German fulfills the exactions of the totalitarian state, will be of decisive influence on the ultimate outcome of the test to which the experiment of mass control by mass organization is being put through the war.

The "Service Frames"

(*1*) *Labor Service*

The labor service, though hailed as an invention of the regime, was introduced by the Republic on a voluntary basis, for much the same reasons—for relieving the unemployment situation and for removing young people from the streets to healthy surroundings. National Socialism, after its advent to power, soon abandoned its voluntary character for outright conscription.[1] It begins at the age of 19 and lasts for six months, which must be spent in labor camps. Girls entering remunerative occupations must show that they have served six months in households or agriculture. Universal compulsory service for girls was announced in July, 1939. The organization is similar to that of the army. Leaders and *Amtswalter* especially trained and serving for 10 years, are the permanent staff, all without exception deserving party members, drawn particularly from the SA. Members are under military discipline. The Labor camps are one of the highlights of the regime and are readily shown to foreigners. With their magnificent material, the German youth of all classes, and their well-planned and useful work in

[1] Reich Labor Service Act, of July 26, 1935 (RGB. I, p. 769).

drainage, reforestation, road-building, and settlement, they are indeed something to be proud of. They serve for leveling class distinctions and give the book-worms and stay-at-homes a taste of hard work in the fresh air. At the same time, the labor service offers a welcome opportunity to the authorities for intensive indoctrination; and, incidentally, it takes more than half a million men a year from the labor market, which is one of the explanations of the miracle of "wiping out unemployment."

(2) *Military Service*

As a rule, the young German proceeds from the labor service to the military service. It is now commonly considered one of the supreme mistakes of Versailles to have deprived a "military-minded" nation like Germany of the right of conscription and to have limited the army to merely 100,000 professional soldiers. No previous measure of the regime was, therefore, greeted with such unanimous acclaim as the re-introduction of conscription, which Hitler sprang on the nation and the world in March 1935.[1] The defense forces consist of the three branches of the army, the navy, and the air force—the latter equal in social prestige to the cavalry in former times. The exact number of corps and divisions is unknown, since recent shifts in preparation for the war are shrouded in a veil of secrecy. Every able-bodied German must serve two years. Jews are excluded; Jewish "mixed offspring," though compelled to serve, cannot attain any rank, not even that of a corporal. Political activities are prohibited for members of the armed forces of all ranks. Even membership in the NSDAP and the right to vote are in abeyance —a concession won from the party by the generals, who feared that Nazi indoctrination during the service would be harmful to military discipline.

(3) *Civil Service*

The full impact of the change in position and function of the civil service (*Beamtentum*) can be measured only in comparison to the situation before 1933. When still in opposition, National Socialism untiringly repeated the complaint that the Weimar "system," through the vices of party bias and parliamentarism, had destroyed the traditional honesty and efficiency of the civil service; that the parties controlling the government

[1] See law on the establishment of the defense force, of March 16, 1935 (RGB. I, p. 375) and the Defense Act (*Reichswehrgesetz*) of May 21, 1935 (RGB. I, p. 609).

had filled the positions with "party-book" officials whose only qualification was membership in a government party, while political non-conformists were unduly excluded. Whatever the faults of the Republic, its record in matters of bureaucracy and civil service is beyond reproach. It failed crucially, however, in not purging the personnel of anti-Republican members. Even though many of the officials were unfavorably disposed towards democracy, the tradition of political neutrality prevailed. Administration was conducted, on the whole, for the general welfare, not for specific party interests.

When the Nazis seized power, almost their first major piece of legislation, the ominous Government decree "for the restoration of the professional service" [1] served as the basis for methodically combing out from the civil service "Non-Aryans" as well as "politically unreliable" officials. For the first time in German history, the "spoils system" became a legally recognized principle of government. Vacancies were filled with partisans, regardless of professional efficiency and frequently even of training. The entire system of appointments and promotions was revolutionized in order to bring the civil service of Reich and Laender under party control. Finally, the codification in the Public Officials Act of 1937,[2] deliberately uprooting the tradition, converted the civil service into an instrument of political domination. No longer a politically neutral expert, the public official is now an exponent of the National Socialist "world-outlook." Unconditional defense of the political aims of the regime now take precedence over objective administrative efficiency. The German official pledges personal allegiance and unreserved obedience to the person of the "Fuehrer" himself, instead of to the abstract notion of the State or to the fulfilment of his duties. Technical qualification for the office, formerly established by special training and competitive examinations as the exclusive basis for appointment, is now less important than political reliability. At present no appointment, except to minor positions, is possible unless the applicant is a tested member of the party and has undergone special training in the party doctrine. In all appointments, nominally reserved for the "Fuehrer" himself, the Deputy-Leader of the party (Hess) participates.[3] The membership badge

[1] Law of April 7, 1933 (RGB. I, p. 175).
[2] *Deutsches Beamtengesetz*, of January 26, 1937 (RGB. I, p. 39).
[3] Edict of the "Fuehrer," of September 24, 1935 (RGB. I, p. 1203). See also Regulations for the training of judicial officers (*Justizausbildungsordnung*), of July 22, 1934 (RGB. I, p. 727).

as technical qualification for office is, according to reports of unbiased observers, responsible for the decay of administrative efficiency in almost all walks of public life. Even the Public Officials Act, which takes great pains to return, at least on paper, to the traditional concepts of public service, contains so many political reservations and pitfalls that security of tenure continues to depend on political conformity. No category of officials escapes the constant scrutiny of the party zealots as to devotion to the cause of the regime. The stability of the regime has immensely benefited from the fact that public officials are political tools. It should be added that the number of administrative offices and beneficiaries in State and party has inordinately increased under the totalitarian Third Reich, another contribution to the miracle of "wiping out unemployment." There are fields in which the havoc wrought by the Third Reich may be irreparable. Civil Service and public administration, for which Germany was famed for centuries, may be among them.

(4) *The Liberal Professions*

National Socialism organized all professions "affected with public interest" into compulsory service frames, whose members have definite duties towards the State and the public—duties which are determined by National Socialist concepts. This innovation conceives of the lawyer, notary, doctor, veterinary, apothecary, pharmacist, or engineer as a quasi-official whose professional duties should take precedence over his private interests. Such professional organizations are a sort of modern imitation of medieval guilds. The members, admitted only after a rigorous process of selection from the viewpoint of party loyalty, perform a public service and are subject to professional regulations (*Dienstordnung*) which emphasize invariably that the profession of the lawyer (doctor, notary, etc.) is not a trade but service for justice (public health, etc.). In practice such "guilds" produce less a new code of professional ethics than political uniformity and conformity to the standards of the regime. Party-recruited supervisory boards, composed of members of the profession, guarantee, by their power to revoke licenses, the submission of the members. Thus the backbone of potential opposition, which under dictatorships comes most frequently from the professional intelligentsia, who are independent of the State, is broken.

CHAPTER XXXIV. THE "ESTATES"

General Character

Far more difficult, because of the amorphous character of social life in a modern State given to the division of labor, was the task of the regime of establishing political control over economic and cultural occupations in general. Under private capitalism, the influence of more or less spontaneously created organizations and of associations of specific economic interests, which have grown up organically, is a common feature. Such organizations exist in all states for capital and labor, employees and employers, trade, agriculture, and, to a lesser extent, also for the consumers and the petty bourgeoisie, in Germany called by the rather untranslatable term *Mittelstand.* They function in the main as political pressure groups or lobbies for the furtherance of their occupational objectives. In a parliamentary democracy, they use the large political parties for their economic purposes. In Germany they even formed specific "economic-interests" parties. Politics were increasingly fused with economics, and economics increasingly determined politics. This system of economic pluralism, in which the State played only the role of a neutral umpire destined to compromise between conflicting economic interests, provided the National Socialists with particularly effective ammunition during their fight against the Republic.

Consequently, once in power, the regime set out to reverse the situation: Politics should be given precedence over economics; economics should be strictly subordinated to the political aims of the government, instead of political institutions being utilized for private economic interests. The entire economic forces of the nation were to become instrumentalities of the political leadership (*Staatsfuehrung*). The technical device for this task was that of organizing society into the frame of economic and cultural "estates" (*Staende*).

It is indicative of the eminently realistic sense of the regime

that the system of estates bears only a superficial resemblance to the Italian corporative State. While the latter is intended, at least in theory, to provide for economic autonomy and administrative self-government of the different economic groups, the estates in Germany admittedly are only agencies for the control of economic and cultural life by the State and the party. They do not participate in the formation of the economic policies dictated by the State. The people take the "folkish ordering of life" (*voelkische Lebensordnung*) at its face value. It served as an empirical device for entrenching the regime and for economic mobilization for war. It matters little that the estates are said to possess, in terms of the statutes creating them, "autonomy," or that a paramount educational function is ascribed to them, which the Nazis call rather cryptically "guidance of men" (*Menschenfuehrung*). What matters most to the individual is that the estates too are equipped with regulatory powers over the members included in the professional frame. Thus Mr. Everyman has to take orders and instructions from another master, who, incidentally, is again the party-controlled State.

At present five such "estates" are in existence: (1) The Labor Front, the mammoth organization regulating relations between capital and labor, and embracing both; (2) Trade and industry; (3) The artisans (crafts); (4) Agriculture ("the Nutrition estate"); and (5) The cultural "estate."

German Socialism

According to the National Socialist doctrine, productive society rests on three pillars. The first is labor (*Arbeit*), to which the highest social value is attached. Even the currency is based on labor and not on soulless gold. The second is soil, in which the farmer (*Bauer*) is rooted. Finally, there is the production of goods, for which capital, symbolized by the entrepreneur (*Unternehmer*), is responsible. The interplay of these three sections of economic life, under the control of the State, is what the doctrine praises as "German socialism." In weeding out the purely acquisitive character of capital, and in making the work of the laborer and the farmer both a personal honor and a national duty, the Nazi pretend to have inaugurated a socialistic millennium of typically German flavor. Of this so much at least is true, that worker, farmer, entrepreneur, and consumer alike feel the heavy hand of the State, that none is exempted from its totalitarian control. If equality of sacrifice and uniform exposure to regimentation is the mark of

socialism, the Third Reich certainly may claim to be a Nationalistic and a Socialistic state.

The Four-Year Plan

Germany's social life—and with it the mirage of German "socialism"—was revolutionized by the introduction of the Four-Year Plan in 1936. Deeply conscious that Germany lost the last war mainly because the blockade cut off her foodstuffs and raw materials, Hitler decided that Germany, through her master-chemists, engineers, and agriculturists, should become economically self-sufficient and should produce what she needs in peace and war on her own soil and from her own internal resources. Goering, as Commissioner for the Four-Year Plan, was made economic dictator [1] for the execution of this gigantic task of establishing autarchy in a country which normally depends for a large percentage of both food and raw materials on imports and the free interplay of goods and currencies. In due course the Four-Year Plan came to dominate German economic and social life entirely. In 1939 the Ministry of Economics was practically subordinated to the Four-Year Plan administration. For the mobilization of all economic resources in man-power, materials, and plant equipment, all principles of orthodox or even normal economics, as well as most of the policies and postulates derived from the concepts of new Socialism, were jettisoned. The totalitarian war was anticipated by the totalitarian peace. Germany under the Four-Year Plan had become a system of pure and undiluted State capitalism strained to the utmost for war preparedness, to which all tenets of National Socialism are subordinated.

(*1*) *The Labor Front*

When attempting to appraise the position of capital and labor under National Socialism, one has to distinguish between the Labor Front as the organizational frame which embraces both labor and capital, on the one hand, and the regulation of labor conditions in the individual plant or store, on the other hand, which, though determined individually, must conform to the general standards of the Labor Code of January 1934, another "organic" statute of the Third Reich.[2]

The Labor Front was established under the leadership of Dr.

[1] Ordinance of the Fuehrer for the execution of the Four-Year Plan, of October 18, 1936 (RGB. I, p. 887).

[2] Law for the regulation of national labor, of January 20, 1934 (RGB. I, p. 45).

Ley after the NSDAP had seized, on May 2, 1933, the Socialist trade unions, the backbone of the Marxian Socialism, and confiscated their huge property for the State. At first intended only for the compulsory co-ordination of the trade unions, the Labor Front, after a good deal of experimentation, rose to be the exclusive organization of both labor and capital.[1] Absorbing factually the multiple associations of employers and employees, it became in economics the counterpart of the monopoly of the party in politics. Simplification and centralization served best the purposes of political control by State and party. At present there exist eighteen "National Enterprise Communities" (*Reichsbetriebsgemeinschaften*), grouped in line with the principal industries and subdivided territorially into regions, districts, and locals. In each case both employers and employees are included. Membership can be obtained either through membership in one of the employers' associations or, for the workers, individually. In practice, membership is compulsory for both employers and workers. Not only workers, but also most of the independent artisans and small employers are members. One may describe the Labor Front as one monopolistic party-controlled trade union for both capital and labor, if one understands the term "trade union" correctly as denoting, not a representation of labor interests, but a totalitarian institution of the State for regimenting the entire industrial life of the nation.

Today the Labor Front is a huge bureaucratic organization, with about thirty million members, the largest group of its kind in the world, with magnificent offices in each capital and large town. Moreover, through that notorious part of its activity which is called the "Strength-through-Joy" organization (*Kraft durch Freude*), it is an enormous business undertaking in its own right. Its budget is fed by compulsory contributions of workers and employers and—after covering the inappropriately high administrative expenses, estimated at some 20 to 30% of the total income—is devoted wholly to instilling National Socialist propaganda into the workers. Very little goes to the workers in the form of financial support because unemployment has disappeared owing to the armament boom and the absorption of millions of men by the cadres of conscription and the offices of State and party.

The main purpose of the Labor Front is education. It pur-

[1] The Labor Front received its formal Constitution on October 24, 1934. By an ordinance of the Fuehrer of March 29, 1935 (RGB. I, p. 502) it was declared part of the NSDAP as an "affiliated association."

ports to be the answer of National Socialism to the idea of the class struggle. Capital and labor have sunk their differences under the benevolent paternalism of the State, says the doctrine, and are well on the road towards the true "people's community" where both vie with each other in unselfishly promoting national interests. Strikes and lock-outs have no place in the people's community. In fact, they are punishable as treason. In practice, the Labor Front is a mechanism for economic and political control of industrialists and workers and for infusing into both the principles of National Socialism.

(*a*) *"Strength-through-Joy."* Control and indoctrination are masterfully combined in that activity of the Labor Front which deservedly has attracted most attention: the "Strength-through-Joy" movement. Copied from the *Dopolavoro* organization of the Fascist party in Italy, though considerably improved upon, it takes care of the leisure time of the workers and their families, and provides the most variegated program of entertainment and education imaginable. Sports, theater, concerts, lectures, hobbies are under the sponsorship of the party officials. Last, but not least, the German "wanderlust" is cultivated. "Strength-through-Joy" functions as an official tourist and travel bureau, which makes accessible to the workers for comparatively little money the wonders of the world, formerly open only to the privileged rich. It runs hotels, beaches, a flotilla of excursion ships, and even a motorcar factory which promised to each German a car for about $400 in easy instalments. The idea behind these manifold activities is never to leave the worker alone, not even after work, and to make him conscious of the omnipresent solicitude of the regime. Whatever he does, he is under the eyes of the party spies. Mass-control does not admit of privacy.

In addition, the Labor Front practises what is the much-quoted concept of "dignity of work." The manual worker must enjoy working. Long hours and low wages are to be compensated for by stimulating surroundings for work. The worker's place, it is emphasized, is the place of honor in the national community. Much is done to beautify the plant, both by workers and employers. Sanitary conditions and clean, bright, well-kept plants testify to the care of the Labor Front officials.

(*b*) *The Position of Labor.* The new concept of labor as the highest of social values could not fail to affect deeply the position of labor within the "people's community." The Labor Code of January 1934, while abolishing all collective rights of labor as a

class, sanctifies labor as a social institution. The owner of the plant or store is the "leader of the enterprise," employees and workers are his "followers" or "retinue," thus proclaiming the leadership principle in business. The new feudality is reflected in the new ethics of labor relations. Labor is stripped of its character as a private right, operating between freely contracting parties, and raised to the higher level of a social duty subject to guidance and control by State and party. The "leader of the enterprise" must take care of the welfare of his "followers," while the latter have to keep "loyalty" to the entrepreneur and the enterprise. Loyalty to the "shop community" is enforced by the local Labor Trustee (*Treuhaender der Arbeit*), a Government official taken from the ranks of the party loyalists.[1] A shop council (*Vertrauensrat*) has a consultative voice in minor matters concerning the operation of the enterprise, such as working conditions within the plant, protection from accidents, and maintenance of good relations among the employees. For the members of the shop council elections were prescribed, but, against the letter of the law, they have been indefinitely postponed since 1935 because in the two preceding elections the workers failed lamentably to respond to the Nazi tickets in the individual plants. The "leader of the enterprise," however, is undisputed master in determining the management of the business—within the confines of party control. Prior to the introduction of the Four-Year Plan, the Labor Trustee had important functions in the regulation of wages and hours in the individual plant, or for whole groups of an industry; in the dismissal of workers, which he could prohibit; and particularly as a "Social Honor Judge," who punished infringement of labor ethics by both employers and employees.

Most of such improvements in the status of labor were thrown overboard under the Four-Year Plan. The problem of creating labor for the unemployed (*Arbeitsbeschaffung*), the pivotal point of labor policies before 1936, transformed itself into the problem of overcoming shortage in raw materials, caused by the lack of transferable currency, and of finding the workers for the immensely increased production of war material under the whip of autarchy. The supreme task of economic mobilization for the coming war overshadowed all other interests. The eight-hour working day, though nominally still in force, has given way to the ten-hour day; in industries "of political importance for the

[1] See law of May 19, 1933 (RGB. I, p. 285).

State," twelve hours and more have to be worked and paid for.[1] No wonder that the workers in the factories, feeling the pressure of the inadequate food situation and the increasing speed-up system (*Arbeitssteigerung*), an illegitimate child of Russian Stakhanovism, are becoming restless and sullen. Wages, at first stabilized at the lowest level of the depression, have not been increased in conformity with the decreased purchasing power and the rise in the cost of living. Moreover, distribution of labor (*Arbeitseinsatz*) is now regulated strictly by the state. The worker is as much tied to the plant as the farmer is tied to his farm. All previous measures for creating jobs by eliminating women, substituting older workers for younger men, married workers for unmarried, transfer of industrial workers to agriculture, are outmoded. Free movement of labor in the labor market is no longer possible. No worker in one of the "nationally important" industries—a category constantly enlarged—may leave his job without permission of the labor authorities. In 1935 the "labor-book" was introduced[2] in which every change of job must be entered. All young people on leaving school have to be registered with the official employment agencies in order to be placed according to the needs of industry, and no longer according to their own preferences. Regimentation of labor reached its climax when, in June 1938, the Commissioner for the Four-Year Plan decreed universal labor conscription for all Germans.[3] The President of the Labor Office can assign to anybody, irrespective of his present occupation, any kind of work or employment for an indefinite period. No worker or employee may leave a job without his permission. Whoever is called upon must undergo training in any labor assigned to him. Hundreds of thousands of workers have been transferred against their will to do work on fortifications and other "nationally important" undertakings. Shops have been closed down and the owners conscripted for work in the factories. Military conscription is supplemented by universal labor conscription. The result of this extraordinary situation under the Four-Year Plan is that everybody, worker or non-worker, is the helpless serf of the State. Freedom to choose one's place of work or even one's calling no longer exists. The entire nation has to slave for the new Pharaoh

[1] See law on working hours (*Arbeitszeitordnung*) of April 30, 1938 (RGB. I, p. 447).

[2] Law of February 28, 1935 (RGB. I, p. 311). See also Ordinance of April 24, 1939 (RGB. I, p. 824).

[3] Ordinance of June 22, 1938 (RGB. I, p. 652).

called the State as had the Jews for the old Pharaoh in ancient Egypt.

(2) *The "Estate" of Trade and Industry*

(*a*) *Organization.* If it is true that industry and big business helped Hitler into the saddle in order to get rid of the interference of organized Socialism, they have found a much sterner master in National Socialism. Although the process of co-ordination of business under the restraining influence of Dr. Schacht was less rapid and more cautious, trade and industry are today no less under the heel of the regime than all the other professional groups. The scheme finally adopted for controlling trade, industry, and crafts (grouped together under the term *Gewerbliche Wirtschaft*) was remarkably indifferent to corporate mythology and eminently pragmatic. The "estate" of Trade and Industry was founded in 1934.[1] Wide powers were assigned to the Minister of Economics for dissolving, constituting, and merging economic associations of industrial or commercial character; for enjoining on individual enterprises or individual persons membership in, and control by, professional associations; and for appointing leaders and officials for such groups and associations. Six supergroups exist: industry, crafts, trade, banks, insurance, and "energy" (electricity and water power). Each group is split into various occupational sub-groups, in addition to regional subdivisions corresponding to the fourteen districts of the Trustees of Labor. The entire industrial and commercial system is covered with a network of rather elastic associations, linking together productive enterprises of related interests, all under leaders appointed by the State (incidentally, not all of them party members). As a result, each individual enterprise or business is brought into a frame of dependency upon the State, which supervises production, distribution, marketing, prices and wages, quality and quantity of production. The various Economic Chambers (*Wirtschaftskammer*) serve as representation of regional groups, topped by the Reich Economic Chamber as the central representation of occupational and regional groups. The system is further complicated by collateral and overlapping organizations destined to establish contacts with related industries and other "estates." The "estate" is also equipped with Honor Courts for industry and trade, em-

[1] Law "on the preparation of the organic reconstruction of German economy," of Feb. 27, 1934 (RGB. I, p. 185).

powered to enjoin upon the members the ethics of the "honest merchant." Of particular interest is the combination of these organizations of entrepreneurs and independent business men with the Labor Front. When the antagonism between the different classes of capital and labor, allegedly buried by the establishment of the Labor Front, threatened to break through the organizational frame, the regime imposed upon big business and industry ultimate control in the famous Leipzig Agreement of March 21, 1935, concluded between Dr. Schacht and Dr. Ley, by incorporating the organizations of the entrepreneurs into the Labor Front itself, thus bringing the giant branch of trade, industry, and crafts fully under the domination of State and party.

(*b*) *Position of the Business Man.* The present position of capital, meaning thereby the independent business man and industrialist, can be understood only on the background of State-controlled economy (*Zwangswirtschaft*) inaugurated prior to, and fully developed under, the Four-Year Plan since 1936. Economic life in the Third Reich presents itself as the first large-scale experiment, outside Soviet Russia, in State-planned or regimented economy of a totalitarian character. Economics are subordinated to politics to the extent of completely disregarding commonly accepted economic laws. The devices developed during the last few years are as varied as they are ingenious and effective.

Since a detailed description would surpass the scope of this book, only the following aspects of totalitarian control of economic life may be mentioned:

(a) Managed currency and State-controlled credits: Germany today lives under a controlled inflation, the currency being based rather on productive work than on gold or foreign exchange. "Credit expansion" by a variety of methods serves for labor creation and the objectives of "military preparedness." Credit from State-controlled banks is available only for industrial purposes agreed on by the Four-Year Plan authorities and the Supervisory Boards (*Aufsichtsstelle*). Surplus profits resulting from the armament boom must be invested in Government loans. The money market is exclusively at the disposal of the Government.

(b) Stabilization of prices: In order to embark on an inflationary course without frightening the common man who had not forgotten the experience of the inflation of 1923, the regime

resorted to the World-War device of freezing wages through rigid control by the Trustees of Labor and the Commissioner for the Four-Year Plan, respectively, while at the same time rigidly stabilizing prices of commodities, capital goods, and services. As early as 1934 the institution of the Reich Price Commissioner, well known during the war and the depression, reappeared. Price control is strictly enforced and grudgingly obeyed. The system of price control is coupled with:

(c) Rationing of food and raw materials, much of which are obtained by barter. Here another set of Supervisory Boards came into existence. They function today for practically all commodities (e.g. textiles, metals, fats, iron and steel, most food stuffs, coal, and salt). The Boards supervise production, distribution, marketing, storing, and consumption of goods under control. Long before the start of actual warfare, the consumer was subjected to a rationing system similar to that employed during the last war. In all industries the ominous *Ersatz* (substitute) has entered daily life, borne with sullen acquiescence in view of Dr. Goebbels' watchword that "cannons are better than butter."

(d) Finally, the common feature of private capitalism, namely, trusts or combines, in Germany called "cartels," is widely used by the regime for bringing industrial production and public utilities under the control of the State. The Reich Economics Minister and also the officials of the Four-Year Plan can demand the opening of new establishments and the closing down of existing ones. They can prescribe types, quality of production, as well as prices, wages, markets, and investments. The business man is forced into or driven out of business according to the needs of military economy. Individual enterprise, as well as whole groups of industrial production, are tied into the strait-jacket of absolute economic compulsion by the State.

The business man at least realized long before the official German-Russian alignment that the roads of Red and Brown Bolshevism had finally converged. His lot under National Socialism is little better than that of the worker. The margin of private initiative has dwindled. His business is "on trust" for the State. The owner is only the manager—a highly paid one, to be sure—for the State, which owns and directs his business; his tangible compensation is the "good life" which he enjoyed at least before the outbreak of the war. Profits under the armament boom were huge. As in every inflation, whether open or concealed, spending was rampant. But he feels that the money which flows so freely

through his hand is not the money he would like to keep.[1] No other social class is more disillusioned.

(3) The "Estate" of the Crafts

By similar methods of pressure, propaganda, and organization, the widely diversified world of craftsmen and artisans has also been brought under State and party control. The existing "guilds" of crafts (*Innung*) served as the *nuclei* of the compulsory organization.[2] Compulsory membership and the leadership principle were introduced. At first, in conformity with the promises of the party, much was done to encourage the handicrafts which were in danger of being submerged by the machine age. Under the impact of war preparedness, however, independent artisans, once the staunchest supporters of the rising movement, were among the social classes hardest hit. Within the streamlined frame of self-sufficiency and centralized military economy no room was left for the small and uneconomically handled independent business serving only the local market. Lack of raw materials and shortage of labor drove the "little business man" out of independent existence and into the factories. It was exactly that fear of proletarization which had led the petty bourgeoisie to endorse the regime. It seems that an entire class and by no means the least valuable, was sacrificed to the Moloch of military preparedness for the coming war.

(4) The "Estate" of Agriculture

(a) The "Hereditary Farmer." Of all callings, that of the farmer is least accessible to regimentation. Tilling his soil by the sweat of his brow, bound by the inexorable law of the seasons, his profession is the most individualistic and at the same time the most conservative. Yet the regime succeeded in integrating the farmer as completely into the totalitarian State as the worker or business man. This result, one of the greatest triumphs of National Socialist psychological insight and organization, was obtained by offering to the farmer at once a new social status and

[1] One of the leading German industrialists, the steel-magnate Fritz Thyssen, left Germany for Switzerland after the outbreak of the war, allegedly because he believed that Nazi-Germany is heading for defeat. Thyssen had acquired a wide reputation as one of the main contributors to the party chest before the conquest of power, and as a staunch capitalist-supporter of the regime hereafter. His vast properties were reported confiscated by the Reich. One may well entertain substantiated doubts as to both the reasons given for his alleged self-exile and the sincerity of his conversion to anti-Nazism.

[2] Law on the preliminary structure of German crafts, of November 29, 1933 (RGB. I, p. 1015).

tangible economic benefits—exactly what the Republic, in spite of powerful agrarian parties, had neglected to do for the "forgotten man." The new social status was bestowed by a genuine "ennobling act," the Hereditary Farm Law of 1933.[1] The gist of the new legislation was to make the farmers a truly privileged class in neo-feudalized society, under a special private law. From the holiness of the soil radiates all that is dear to the doctrine of National Socialism. Purity of the race, economic independence of the farming class, as the backbone of national defense, and the spiritual values flowing from contact with the soil, are looked upon as the fountainhead of national strength. This law, as the manifest fruition of the "blood and soil" dogma, creates a new peasant nobility, independent of economic fluctuations, an effective counterweight to undesirable urbanization. Soil is no longer to be an object for materialistic speculation like any other fungible good, but a sacred trust of the owner for his family and the whole community. All estates up to about three hundred acres are compulsorily converted into hereditary homesteads (*Erbhof*) if they are capable of supporting a farmer's family. The owner is the bearer of a new title of nobility (*Erbhofbauer*). Upon the farmer's death the estate passes undivided to his eldest (or youngest) son or the nearest male relative. The other children are entitled to claim support from the farm, and, in turn, are liable to service on the farm. The younger generation at first was threatened with becoming a new class of *glebae adscripti,* yoked under the new bondage in the name of blood and soil. Such effects, however, were offset by the labor shortage under the Four-Year Plan, which drove large parts of the farming population into the cities and factories. As a corollary to the protection by the State, the owner has no right to sell or to mortgage the farm, or parts thereof, without permission of his local Hereditary Farm Tribunal; and the farm and its accessories cannot be attached by his creditors. While the soil is thus made sacred and inalienable, in practice the situation has become double-edged for the farmer. Private credit is scarcely available to him because of the impossibility of attachment or mortgage. Not a few farmers are deeply resentful, especially since the hereditary farms are no less subject to State regimentation than all other agricultural occupations. "Non-Aryans," of course, cannot be hereditary

[1] *Erbhofgesetz,* of September 29, 1933 (RGB. I, p. 685). Once more the idea incorporated in the law is by no means an invention of the regime. It was borrowed unscrupulously from legislation existing in some of the German Laender for many centuries.

farmers. The new system of entails was extended, in June 1939, also to the *latifundia* of the Prussian Junkers, which the Nazis, in spite of nominal abolition of this remnant of feudalism in the Republic, did not dare to touch.

(b) The "Nutrition Estate." The agricultural estate was founded as early as July 1933.[1] On the whole, the agricultural estate is less artificial and corresponds more closely to the natural homogeneity of professional interests than all the other spurious creations of the neo-feudal system of the Third Reich taken together. Under the leadership of the Minister of Agriculture (Darré), the Nutrition estate embraces all persons occupied in and deriving their income from agriculture in the broadest sense of the term, including the growing or producing of agricultural products proper (together with dairying, horticulture, winegrowing, fishing, bee-keeping, and hunting) as well as all manufacturers of agricultural products (including beer, sugar, meat, lumbering, and liquor), with corresponding influence on the guilds of millers, bakers, butchers, and whoever has to do with victualling the population. In particular, the Minister was empowered to fix prices, and to combine growers, producers, manufacturers, and distributors into groups and associations. Co-ordination with the party and the leadership principle was established through the Reich Peasants Leader (again Darré) with his elaborate staff, the Farmers' Councils of appointed advisers, and all the trimmings of a full-fledged controlling bureaucracy. The "Nutrition Guild" is subdivided into regional districts and local groups, each under a "leader." No village or hamlet fails to have its local boss who holds the farmers under his thumb. Nor are "Honor Courts" missing.

This vast organizational frame serves at the same time the purposes of education and regimentation. It prescribes the kinds of products to be grown, methods of production, quantities to be delivered to the State, prices to be charged and obtained, markets to be provided for, either for "combines" (*Zusammenschluesse*) or associations of similar undertakings, or for the individual farmer. Existing agricultural enterprises may be closed down or new ones established, as directed from above. Not even the smallest farmer tilling his soil for home-consumption is left alone. The groups function as supervising and controlling agen-

[1] Law of July 15, 1933 (RGB. I, p. 495) and Law "on the preliminary structure of the Reich nutrition estate," of October 13, 1933 (RGB. I, p. 626); see also Ordinance of December 8, 1933 (RGB. I, p. 1060).

cies of the State. The farmer has lost even the freedom of planting and growing whatever he thinks fit (*Anbauzwang*).[1] He must take the land under the plow and change from one kind of products to another if so required. If he misuses the land or does not comply with the requirements of the local authorities, or if he is responsible for less yield of the soil than is computed in advance, he may be deprived of the right to run and even to own his farm. Long before the war broke out the German householder was enrolled for most of the foodstuffs in one retailer's shop from which he receives, if available, the rationed quantities, a system closely resembling the food-rationing cards during the last war.

As to actual agricultural policy, National Socialism took care at first to privilege the farmer, the spoiled child of the regime, by such measures as protecting him against foreclosure and execution of judgments, abating his debts by new insolvency procedures, and by compelling private creditors to consent to substantial reductions of interest. Moreover, prices are protected from foreign competition by throttling imports. The "fair price," as determined by the State, is guaranteed to the farmer. Distribution and marketing are directed by the Supervisory Boards (*Ueberwachungsstelle*), which are important figures on the chess board of home economics, because the German housewife is potentially a much more dangerous enemy than the underground opposition. By skillful manipulation of the markets the level of the food situation, though low, is not dangerously so, and has been maintained, on the whole, even under the pressure of the blockade.

(*c*) *Position of the Farmer.* If it is true that the attitude of the farmer decides ultimately the fate of a dictatorial system, it seems that the Third Reich has little to fear from these quarters. Labor shortage, at times felt acutely, was remedied by compulsory devices under the Four-Year Plan and by import of seasonal labor from other countries, lately in particular from Austria, Bohemia and Moravia through conscription. The huge masses of Polish prisoners of war tend for the moment to solve satisfactorily this pressing problem. The lot of the farmer is better than that of most other social classes. He knows that he is indispensable; his social prestige is greatly enhanced; and he is no longer exposed to the vicissitudes of market fluctuations. Whatever he produces is sold in advance. He grumbles more than

[1] Introduced by Ordinance of the Commissioner for the Four-Year Plan, of March 23, 1937 (RGB. I, p. 422).

other classes of the population, and with more impunity. But the regime, through keen psychological insight and organization, has well learned the art of keeping the farmer in good humor. In war time the farmer is altogether indispensable and the German farmer is not tardy in making the best of his privileged position.

(5) *The "Cultural Estate"*

(*a*) *Cultural Activities and Public Opinion.* During and after the war, the word *Kultur* was almost a by-word for aggressive superciliousness and arrogant assertion of the superiority of German cultural life. Yet, aside from the more crude and trite expressions of intellectual self-consciousness, it must be said that "the nation of poets and thinkers" held its high rank in the cultural competition of the world, as evidenced by the scholastic, intellectual, and artistic achievements of the Republic. The Nazis when still in opposition assailed the "Jewish-Liberal-Marxist" "asphalt" culture of the Republic and of the metropolitan Babylon, and held out the prospect of a fundamental renovation of cultural values under the Swastika, a "renascence" of the "Hellenic beauty of the Germanic genius" once it was liberated from the fetters of "hybrid international intellectualism."

Without attempting to define precisely what is meant by the term "culture," one may contend that what is called the public opinion of a nation is determined by the totality of its cultural manifestations. National Socialism, bent upon control of public opinion for ferreting out opposition and instilling the tenets of its own creed into the people, could not feel secure without at least the tacit or passive consent of public opinion. No despotism can sit forever on bayonets. Consequently, co-ordination of public opinion and all cultural activities contributing to it was the first task of the regime, attempted with vigor and accomplished with mastery under the leadership of Dr. Goebbels, Minister of Propaganda and Public Enlightenment and intellectual wizard of the Third Reich.

(*b*) *The Reich Chamber of Culture.* The primary task, therefore, was to bring the press, as the foremost organ of public opinion, under the control of the regime. During the consolidating period, opposition and criticism were silenced by outright violence and direct or indirect intimidation. Rapidly the political press was purged of Socialist, liberal, democratic and even conservative personnel. There followed, again through pressure and

intimidation, a complete change in ownership. Almost at once, and ever since, the press voiced only the policies of the regime as dictated from above. The masterly device for maintaining and continuing political conformity is the system of licensing all individuals desiring to exercise cultural activities under toleration of the regime.

The organizational structure controlling all cultural activities is the Reich Chamber of Culture, another "estate," established as early as 1933.[1] As the counterpart of the Labor Front or the Nutrition estate, it is the centralized organization for all cultural activities in the widest sense. The statute declares that "all persons who participate in the production or reproduction, in the intellectual or technical elaboration, the distribution, the preservation, in the sale or as middlemen in the distribution of cultural goods," must be members of one of the affiliated organizations of the Chamber. The Reich Chamber of Culture, again a corporation of public law, embraces, in seven subdivisions (also styled Chambers), the professional associations of writers and authors; journalists and editors; musicians; artists; the personnel of the theaters; of the films, and of radio. Nobody can exercise one of these professions unless he has been admitted as a member of one of the respective groups. If he loses membership through "professional misconduct," that is, almost invariably, by lack of political reliability, he is barred from his profession and exposed to what is aptly styled "professional death." The individual chambers, as well as the Reich Chamber of Culture, may make exercise of the profession dependent on the fulfilment of certain requirements. Little wonder that compulsion or outright violence is no longer needed. No member dares to violate the professional canons dictated by the policies of the regime. Uniform submission is the result of a political religion for which Hitler is Allah and Goebbels his prophet.

Specific statutory regulations exist for all intellectual and cultural activities. Practically, the most important is the law "on Editors" of 1933,[2] which applies to all persons of editorial rank in the journalistic profession. The editor is considered a public official, his function a public task. Exercise of the profession is dependent on enrollment in the list of editors, only such persons being enrolled as are personally and politically qualified. In due

[1] Law on the Reich Chamber of Culture, of September 22, 1933 (RGB. I, p. 601).

[2] *Schriftleitergesetz* of October 4, 1933 (RGB. I, p. 713).

course only trusted party members came to hold the key-positions in the daily press. The editor is subject to disciplinary control by the Press Honor Courts, which may strike him off the roll. Moreover, the Propaganda Minister is entitled to decree his elimination from journalism for "reasons of public welfare." All editors and journalists are compulsory members of the official association of the press (*Reichsverband der deutschen Presse*), one of the departments of the Reich Chamber of Culture.

Similarly organized under closest Government control and supervision are the professions of the theater,[1] the film, and, last but not least, the radio. Broadcasting was from the beginning a State-controlled institution in Germany; since the advent of National Socialism it is a Government monopoly. As was to be expected, it rose to be the favorite and most effective method of official propaganda, particularly since the monotony and uniformity of the controlled press was reflected in decreased circulation and in indifference of the public.[2]

Certainly, the regime cannot complain about lack of co-operation from the co-ordinated and subjugated press. But even the official spokesmen are aware that creative art, under the present system of rigid regimentation, has utterly failed to live up to the vast opportunities offered by a regime which is headed by the *ci-devant* artist Adolf Hitler. In a country whose cultural level is determined by the intellectual capabilities of those in political control, the creative spirit of the German race has reached an all-time low.

1 Law on theaters, of May 15, 1934 (RGB. I, p. 411).

2 Radios are much cheaper than in 1933 and are found in practically every household. They cannot be attached by the sheriff. In 1937, when a sender operated by the "underground opposition" successfully eluded the Gestapo for a long time, a particularly severe decree was published against private senders (Law "on private senders," of November 24, 1937 [RGB. I, p. 1298]).

CHAPTER XXXV. EDUCATION AND RELIGION

Outside the frame of controlling agencies called "estates" are those cultural spheres which are circumscribed by the notions of education and religion. Under the Third Reich, they, as much as all other activities, are exposed to indoctrination and interference by State and party.

National Socialism and Education

For a dynamic regime bent on revolutionizing the German nation in mind, soul, and body, penetration into education was of primary concern from the beginning, difficult as it was in a country justly famed for the efficiency, progressive spirit, and liberalism of its educational policies and institutions. In particular the *Gymnasium* (secondary schools for training in the humanities and classics), the vocational schools, and the Universities were second to none in the world. Illiteracy in Germany is practically non-existent.

(*1*) *Elementary Schools*

The main purpose of schooling in the Third Reich is to infuse National Socialist spirit and "world outlook" into the younger generation during the most impressionable years and to eliminate all educational influences outside the control by the party. Early in 1934 Hitler entrusted Alfred Rosenberg, the "pontiff of culture" of the regime, with the supervision of the entire educational and spiritual schooling of the NSDAP. The Hitler Youth became an equal and in fact a superior competitor of the educational monopoly of the state, a situation which resulted frequently in conflicting loyalties between regular schooling and party indoctrination. Private schools were abolished, thus getting rid of the confessional private institutions; the number of confessional State schools attended only by pupils belonging to one of the two Christian denominations (Catholic or Protestant), in which religion is a compulsory part of the curriculum, is still

surprisingly great, though, under pressure of the party on the parents, constantly decreasing. Final unification of all schools of the Reich—before 1933 education belonged to the jurisdiction of the Laender—was accomplished as late as 1938 by a Government decree.[1] The statute, while containing a goodly number of useful provisions, enjoins explicitly "education and instruction of German youth in the spirit of National Socialism." Consequently, the entire curriculum was reformed in order to fit into the Nazi pattern. Textbooks were rewritten. Foremost topics of instruction are: racial questions—in particular anti-Semitism—, political enlightenment in terms of preponderant military needs, *Lebensraum* and political geography, colonial claims, and Germandom under foreign allegiance. In historical material emphasis is placed on Germanic culture and history, cultivation of the customs of the people, population problems, and other courses similarly affected by political interests. Grammar, languages, and arithmetic are considered as of only secondary importance. This educational lubrication results in making the pupil a sort of automaton which unthinkingly repeats instilled party slogans.

Objective observers note that the standard of education in elementary schools is constantly falling. Various factors contribute to this situation. While attendance has considerably increased, the teaching staff has relatively decreased. Shortage of teachers has lately become a genuine calamity. Particularly, many of the younger teachers have turned to careers in the party, where they are welcomed because of their clerical training. An amazingly large percentage of higher party officials are recruited from among former elementary school teachers. Decrease in the quality of elementary schools is due also to the constant interruption and disturbance of regular schooling by activities of the pupils in the Hitler Youth, by marching, drilling, and service in public demonstrations. Frequent complaints concerning the deficiencies of elementary-school education are vented by parents and by employers after entry of the graduates into professional life.

(2) *Secondary Schools*

Enrollment in secondary schools, particularly attendance of girls, has decreased, on the other hand. This situation, surprising in a nation where learning was so highly valued, is due partly to the deliberate anti-intellectualism of the regime, many of whose

[1] Law on the compulsory attendance of schools (*Reichsschulpflichtgesetz*), of July 6, 1938 (RGB. I, p. 799).

leaders have risen to power without higher education, or much of any education. Who knows more is less willing to obey. Shortage of labor and the easy accessibility of the party career without examinations or other scholastic qualifications—once the prerequisite of every calling in "diploma-minded" Germany—are also partly responsible for this truly revolutionary change in social habits. Moreover, the party has begun to train its future elite entirely outside the regular school system. On the lower level are the "Adolf Hitler Schools" as outspokenly political training institutions. Admission is granted only to students of proven loyalty and on recommendation by influential party members. These party-schools offer the best chances for a career in the party bureaucracy. On the higher level, the so-called "castles of the order" (*Ordensburg*), six at present, knead the future leaders from the magnificent material of German youth; young men, who, in the opinion of the party hierarchy, show courage, resourcefulness, and willingness to make sacrifices, are subjected to an education based on moral character and physical stamina which will, so the regime expects, form the new nobility of the ruling class of the future.

(3) *Universities*

The shift of educational emphasis from the learned to the practical professions is reflected most clearly in the position of the Universities. Since 1933 enrollment has been more than halved, surprisingly also in the Institutes of Technology. The steep decline in the attendance of women is explained by the fact that most academic careers of so "virile" a regime are closed to them. Admission to Universities is granted only to students who have shown their dependability in the Hitler Youth and other party activities. As to the academic teaching staff little need be said, as this aspect of double-edged Nazi intolerance is well known in foreign countries. No other personnel group was more persistently and effectively raided and purged, not only of Jews and professors married to "Non-Aryan" wives, but also of all men of liberal, democratic, and even conservative leanings. The gaps left by the dismissals and expulsions of about 60% of the faculties were filled by young partisans whose scientific qualifications were in inverse proportion to their party zeal. Naturally the turnover was more marked in fields which lent themselves to political exploitation by the regime—law, economics, history, literature, arts; while the natural sciences and medicine, it should be stated in

fairness, still contain scholars of world renown who were willing to co-operate. For the traditional administrative autonomy of the Universities the leadership principle was substituted, the appointed President (*Rektor*) being the leader. Appointments, promotions, and dismissals are handled by the Ministry of Education in Berlin. All reports agree that the scholastic level has been dangerously lowered. Strange new topics—such as military science and political geography, not to forget the ubiquitous "racial sciences"—have been added to the curriculum. Moreover, scholarship and the search for objective truth are ridiculed as "liberalistic" and dangerous in the extreme. No wonder that to many of the better minds the academic career offers little attraction when freedom of scientific conscience is superseded by political dictation. Efforts to improve the faculties, such as regular salaries for the lower ranks, have been in vain. The irreparable loss of the German Universities is the gain of academic institutions all over the world. It is, however, an encouraging sign that the student body is beginning to distinguish between the automatism of Nazified indoctrination and the traditional values of science and learning, which in the long run cannot be withheld from the young mind.[1]

National Socialism and Religion

Any unbiased survey of the position of the established churches (Catholic and Protestant) under the Third Reich and of the relations between the regime and religion must take cognizance of certain basic facts which are apt to be overlooked by foreign observers, particularly in countries where religion has preserved its strength as a social and moral force transcending State and society. Even before 1933, Catholicism and Protestantism were fundamentally different both in their hold on the masses and in social structure. Consequently, their attitude towards National Socialism shows wide divergence. It is misleading, to say the least, to speak of a common front of the Christian churches against the Third Reich. Moreover, in the so-called church conflict, which has been given wide publicity outside Germany, only a very small minority of Protestant pastors and devout laymen—most of them, incidentally, loyal National Socialists themselves—partake. With due reservations, there is no

[1] After the outbreak of the war all but six Universities in Greater Germany have been closed down for an indefinite period. This fact indicates more clearly than all descriptions the fundamentally anti-intellectual character of the regime.

truth in the general contention that "religion is persecuted" by the Nazis. All reports agree that actual religious worship is unimpaired, that services and religious ceremonies are held without impediment, and that they are well attended. It is not surprising, under these circumstances, that no protest against the war was offered by the churches; on the contrary, as in 1914, official prayers invoked the help of the Lord for the victory of the German arms in their just fight.

(1) *Protestantism*

Protestantism of the Evangelical churches, subdivided into the Lutheran and the Reformed denominations, had been in decline in Germany long before the name of National Socialism was coined. It should be emphasized that since Luther, who himself extolled the supreme value of secular authority and enjoined obedience to the State, true to the absolutist temper of the Renaissance, Protestantism has been wedded to the State. The monarch or prince united in his person both ecclesiastical and temporal sovereignty. The alliance between State and church, the fusion of secular and spiritual aims, made a clash between them almost unthinkable. Moreover, Protestantism, since the middle of the nineteenth century, had not escaped the mechanization of the age and had lost much of its strength as a living religion. Habitually, the bourgeoisie accepted it more as a social institution than as a means of individual spiritual salvation. The urbanized masses were indifferent to both churches. The church authorities and the clergy, politically linked to the conservative parties of the Right, were loyal patriots. On the whole, Protestantism was only a thin veneer over certain strata of the higher and middle classes. Once it was scratched off, a deep spiritual hollow appeared into which National Socialism, with its all-embracing claims of a patriotic revival, could easily penetrate. Thus, when the regime established itself, Protestantism was far from being fundamentally opposed to a dogma which corresponded so much to the State-veneration and super-patriotism ever-present in the Protestant attitude toward the secular authorities.

The National Socialist party program contained only a rather vague and colorless affirmation that the party "endorses positive Christianity without binding itself confessionally to a particular creed." Hence, during the first period after the seizure of power, Protestantism offered little resistance to National Socialism. Seen

retrospectively, the policy of the regime toward the Evangelical churches presents the same effort for unification and centralization revealed everywhere in the Third Reich. At the beginning of this process, a revolutionary section within the Protestant church itself, the "German Christians" (*Glaubensgemeinschaft deutscher Christen*), became the spearhead of intransigent National Socialism, very much in the same way as the National Socialist Shop cell organization assumed the lead in the labor movement. This militantly pro-Nazi section, at first officially supported, was a complete failure and is at present almost forgotten. More successful in the immediate aim of unifying the twenty and more different German State churches (*Landeskirchen*) was the activity of an intimate friend of Hitler, the army chaplain Ludwig Mueller of Koenigsberg. The official "Union of German Evangelical Churches" was ready to accept unification of all German Protestant churches under a Reich Bishop and close cooperation with the regime without any protest whatever against the crudities and cruelties of the regime. After a good deal of haggling on both sides, Mueller was appointed Reich Bishop, and a common "Constitution of the German Evangelical Church," still professing the Gospel of Jesus Christ in terms formulated in the Reformation, was published in July 1933.[1] In the elections for the National Synod held on July 23, 1933, the German Christians, under the subtle guidance of the electoral machine of the party, obtained two-thirds of the total vote. Too late some of the Protestant leaders realized that they had surrendered voluntarily to Caesar what belonged to God; that the myth of blood and soil conflicted with the love of man of the Gospel; that the racial claims were irreconcilable with the humanitarian ideals of the Savior; that the Holy Writ, in which their spiritual existence was rooted, was branded by State and party as "Jewish fabrication." Slowly a dissident movement began to fight what appeared with increasing clearness as the aim of the regime, namely, to de-Christianize the Gospel and to subordinate the church to the political purposes of the regime. The leader of the "Confessional Church Movement" became Pastor Niemoeller, a former submarine commander who had had a rather hectic career after the War and had finally been drawn into theology. He was as ardent a National Socialist as any member of the clergy. His opposition, directed at first against the heterodoxy of the "German Christians," hardened later into resistance against the intolerance of the regime

[1] Published in RGB. I, p. 471, on July 14, 1933.

in general. At any rate, at long last a center of open resistance appeared before the German public, a lasting title to admiration, since Socialists and Communists and Conservatives had meekly submitted. Now the regime resorted to open discrimination and even persecution of the rebellious minority. A considerable number of churchmen were placed in concentration camps. Support came from a rather unexpected quarter. A number of the ordinances and decrees of the Reich Bishop, penalizing the ministers of the Confessional Church by depriving them of their salaries and restricting their use of church property, were declared illegal by the Supreme Court on the basis of the existing law. Such judicial interference being unbearable to the regime, a Government decree withdrew controversies arising out of the fight of the Confessional Church against the totalitarian State from the jurisdiction of the ordinary courts and transferred them to a Board appointed and instructed by the Minister of Church Affairs.[1] This high-handed breach of the rule of law turned out to be a formidable weapon against the dissident members of the Confessional Church, many of whom compromised. But chaos and unrest in the Protestant church became so widespread that finally the Minister of Church Affairs, Kerrl, was made dictator of the Protestant church, with exclusive power particularly over the funds from which the dissentient ministers drew their livelihood.[2] The Minister himself, a genuinely religious man, tried a more conciliatory policy, in order to stem the increasingly pagan tendencies of the party clique around Rosenberg and the Elite Guard. A new Constitution for the Evangelical church was drawn up,[3] and even elections of the Synod were promised, though never held. But as an opposition which attracted world-wide attention, the remaining rebels of the Confessional Church were dealt with by the Gestapo. They were cut off from financial assistance and forbidden to preach, to use church property, or to publish their opinions. More and more was official support thrown behind the de-Christianization efforts of the party. At the outbreak of the war only a handful of ministers continued their heroic fight against the totalitarian State. Their chances of survival are no better than those of Leonidas against the Persians. Though their title to ultimate canonization is well established, the stand of the Confessional Church against the regime, seen from a more distant

[1] Law of June 26, 1935 (RGB. I, p. 774).
[2] Law "for the security of the German Evangelical church," Sept. 24, 1936 (RGB. I, p. 1178).
[3] Edict of the Fuehrer, of February 15, 1937 (RGB. I, p. 203).

angle, is little more than a ripple in a lake. The vast majority of the Protestant clergy and of the laymen have never kicked against the pricks and were only too willing to become obsequious instruments of the Third Reich.

(2) *The Catholic Church*

In contrast, the relations between the Catholic Church and National Socialism reveal a gigantic struggle between two equal powers. After seven years of skirmishes and manoeuvering for position, the ultimate outcome is as yet undecided. Catholicism, deeply rooted in the masses as a living religion and simultaneously as a strong social organization, procrastinates with customary diplomatic skill which thinks in decades and centuries. On the other hand, the Third Reich, fully aware that the Roman Church is a world power of inexhaustible resources, and one strongest in defense, has carefully abstained from joining the issue with the Church.

It should be borne in mind that the Catholic Church represents in doctrine and organization a philosophy scarcely less all-inclusive than National Socialism. Moreover, it is equally authoritarian in government and hierarchical in administration. Undoubtedly National Socialism has copied many principles from the strictly enforced church discipline and papal infallibility; similarities between the Jesuit and the Nazi techniques of mental drill and indoctrination are too obvious to be missed. That the regime from the start dissolved the marriage between political Catholicism of the Center Party and the purely religious practice of the creed may not have been entirely unwelcome to the far-seeing clerical leaders, and decidedly enhanced the intrinsic unity of the Church. All these factors may help to explain the conscious reticence of both the Catholic Church and the National Socialist party in their reciprocal relations.

At first Catholicism showed a benevolent neutrality towards the regime, as reflected by the assent to the Enabling Act and the conclusion of the Concordat between the Holy See and the Reich in July 1933, Hitler's first diplomatic success.[1] It stipulated, for the Church, freedom of confession and of public wor-

[1] This was the first Concordat between the two contractants in more than four centuries. Under the Republic Concordats had been concluded between Rome and Bavaria (1924), Prussia (1929), and Baden (1932). The Concordat of July 1933, concluded on July 20, 1933 between von Papen for the Reich and the Cardinal Secretary of State Pacelli, the present Pope Pius XII, is published in RGB. II, p. 679; see also law of Sept. 12, 1933 (RGB. I, p. 625).

ship; guarantee of religious instruction in all schools and establishment of confessional Catholic schools whenever demanded by the parents; Catholic organizations for purely religious, cultural, or charitable purposes without hindrance. On the other hand, the Holy See undertook the obligation of preventing political activity of priests and members of religious orders, thus endorsing the prohibition of political Catholicism desired by the National Socialists. There is scarcely any provision in favor of the church as laid down in the Concordat which the regime has not violated by its subsequent policies. Catholic Youth organizations, even of non-political character, were suppressed. By the law on the Hitler Youth, the State and the party usurped the educational monopoly. However, much less than Protestantism could the Catholic Church submit to the totalitarian claims of the conflicting Nazi "world outlook." No more forceful refutation of the racial myth and the eulogy of crude Teutonism can be found than in the famous Christmas sermons of the militant Cardinal Faulhaber of Munich (1933). For years the Catholic Church stood its ground firmly. In 1937 the regime began to wage a "white" war against Catholicism by persecution of individual priests and wholesale judicial terror. Scandalous trials were staged against scores of priests, lay officers, and members of the congregations, for currency violations and moral turpitude. These trials, widely exploited by the regime in order to stir up resentment against the church, sent hundreds of priests to prisons and concentration camps. Yet neither of the parties denounced the Concordat. Catholic loyalty was split wide open at this time and after the annexation of Austria. The Cardinal of Vienna, Innitzer, by birth a Sudeten German, who had sided with Schuschnigg against Austrian Nazism and resisted Anchluss to the last, went more than halfway to meet the new masters, once the rape of Austria was consummated. Under the common threat, a schism between the German and the Austrian prelates was finally avoided.

This new *Kulturkampf* had its lulls and respites. The regime needed Catholicism in the Spanish intervention. Moreover, the professed fight against Bolshevism is close to the heart of the Holy Father. The fire smolders under the ashes. Occasionally it flares up; but it is always carefully kept under control. Lately restrictive measures of the regime have been intensified, and an inventory of the entire church property ordered—an ominous sign after the anti-Semitic precedent. Yet, in spite of the warfare

conducted with all resources of the regime, the tower of the Catholic Church stands unshaken. The vicious propaganda instilling into the Hitler youth hatred against "the black moles" and the "Jewish" foundation of the Roman church makes little impression on Catholic minds. With the addition of Catholic Austria a solid block of more than thirty millions of devout Catholics within the Reich must be reckoned with. The conquest of Czechoslovakia and of Poland, both countries deeply devoted to the church, has added to the cohesive strength of Catholic unity within the German *Lebensraum*. Persecution has drawn the flocks closer to the shepherds. The regime has found its equal in a philosophy of life which can draw on centuries of experience in mass psychology and "guidance of man." It is unlikely that the Third Reich, in its present bid for world power, will dare to rush the final showdown with the real world power, the Catholic Church. On the contrary, it may even be expected that, once the tumult and shouting of the present age has died down, the Catholic Church will be on the winning side.

(3) *Neo-Paganism*

Not content with subjugating completely the Protestant church and with destroying Catholicism as a political entity, the regime pushed forward on the path to de-Christianize religion altogether and put in the place of the established Christian creeds a neo-pagan faith tailored to measure the crude romanticism of its underlying dogmas. The neo-pagan doctrine tries hard to substitute for Christianity the genuine German faith, liberated, so it is argued, from the residues of the "Jewish-Christian" morality. The Christian dogma, derived from Jewish spiritual sources, is an oriental, Asiatic creed, not compatible with the virtues of the German blood and the German race, inadequate for the mysteries of the Aryan and Nordic soul. The Sermon on the Mount is an infamous humiliation of upright stalwart Nordic virility. Ethics are not the value of good and evil, but only of what is useful and what is harmful to the greatness of the German nation. Christianity, international and pacifist, destroys the militancy of self-defense and the eagerness for world conquest. Jesus Christ is the incarnation of all that the Germanic will power despises. Wickedness and sin are artificial inventions of the Jewish-Christian moralists in order to prevent man from becoming like God. The true savior of Germanhood, he who has instilled life

and power into the inert corpse of the nation, emasculated by the humanitarian sophistries of the Republic, is the man Adolf Hitler. He is the Messiah sent to the Germans in their deepest humiliation, to rejuvenate them and to lead them to that place in the world which they deserve by virtue of their mission as a master-race born to rule.

In this process of de-Christianization and paganization, two interrelated, though not identical, trends are visible. Both have in common their hatred of Jewish-Christian ethics and religion, but they differ in their ultimate aims. On the one hand, the movement is outspokenly neo-pagan in its efforts to revive Teutonic and Germanic rites. There are not yet temples where Wotan and Thor are worshiped; and these may not come. But at least a substitute is found for the Christian symbolism and its infiltration into daily life. Christian holidays and Christian rituals have their Teutonic equivalents in May Day, solstice, harvest day. Pagan festivals with sun rites, Viking reminiscences, and other pseudo-historical rigmarole, are semi-officially celebrated by the regime. Baptisms, weddings, and funerals are held in what is believed to correspond to ancient rites. The calendar is thoroughly paganized.[1] At first neo-paganism started from a more spiritual foundation in the so-called "German Faith Movement," led by W. Hauer, a Christian theologian well versed in the requirements of a pure Aryan and de-Christianized faith and advocating a cult of nature mysteries. His ideas were later taken up by influential sections of the party, in particular the Elite Guard, the leadership of the Hitler Youth, and Alfred Rosenberg, the "Supreme Director of Cultural Activities" of the party. In the Hitler Youth the neo-pagan cult began to fill the gap left by the deliberate erosion of Christianity; and it has, appalling as it may seem to the older generation, a strange attraction for the impressionable youthful mind. Backed by the showmanship of the regime and administered as a deliberate antidote to Christianity, it should by no means be dismissed too lightly. The tempo of this revolutionary age has been speeded up tremendously. Mental processes which formerly grew slowly through decades and even centuries, now develop into maturity within the compass of a few years. What appears artificial and slightly ridiculous today might become spontaneous and deeply venerable tomorrow.

[1] Evidently these practices were inaugurated by the preachings of Ludendorff, his wife, and their "Tannenberg Bund."

National Socialism as a Political Religion

But the breaking down of the dykes of positive Christianity opened the gates to a more formidable tidal wave, which threatens to engulf the Germans and the world. The Third Reich thrives in a new spiritual climate which is wholly inaccessible to Western rationalization. What we witness in Germany today is the emergence of a new religion—a political religion, to be sure, but a genuine religion nonetheless. It is the religion of the nation as the supreme value, and of Hitler as the incarnation of the nation, which has created an atmosphere of quasi-religious exaltation and of incalculable emotionalism. Governmental institutions and their dogmatization can be assessed correctly only in terms of a political theology. Many causes contribute to this situation, with which the Western countries have to cope with as well as they can. By nature and tradition the Germans are inclined to worship the strong man and to prostrate themselves before the power of the State. German history, seen retrospectively, is an endless chain of frustrations and humiliations, of which the Versailles Treaty and the period of the Republic is skillfully depicted as the most abject. In building up an irresistible propaganda, the person of Hitler, the unknown soldier of the war, rising magically from the depths of the people, a poor man coming to the poor, is imbued with the supernatural powers of the Savior himself, raising despairing and wretched Germany to the heights of the most feared nation in the world. Even to the uninitiated his successes appear almost miraculous, although on closer observation they are merely the application of the same tactics which enabled him to overcome the disunited parties of the Republic. But to the Western world, disunited as it was for years, the repetition itself is the mark of his genius. Eradication of unemployment; teeming prosperity; restoration of the "military sovereignty"; "destruction of the Treaty of Versailles"; the "homecoming" of the Saar, Austria, the Sudetenland and Memel through "peaceful" means and without shedding blood except that of the innocent victims after the conquest; the incorporation of Bohemia and Moravia, and, as could be safely expected, of more land once German; the brilliant campaign against Poland while the Western powers were pounding meekly at the iron gates of the West Wall; the amazing boldness in snatching Norway in the face of the British Navy; the helpless prostration of France, after a *Blitzkrieg* unprecedented in all history—all these successes sym-

bolize the national regeneration and promise the impending millennium which will compensate future generations for the sacrifices of the living generation. The past glory of the First Reich is resurrected in the Third Reich. The mystical notion of *Lebensraum,* no longer a term of geography, but of theology, appears as the re-incarnation of the dream deeply imbedded in German blood and history: *Weltmachtstreben* ("urge for world power"). Little wonder that Hitler himself is raised to the level of deity. Deification of the nation and of the "Fuehrer" is symbolically and materially fused into one. The ever-present strain of mysticism in the German character is the root from which this new political religion rises. It matters little to those under the spell of the new theology that Hitler is a mortal human being. So was Jesus Christ or Mohammed. It matters little that the ruling oligarchy, power-ridden, corrupt, cynical, and swaggering, may not share the religious intoxication they have provoked in the masses. What matters are the forces of mass-action unleashed by the apprentice-sorcerers. They invented the formula, and civilization must foot the bill. The world witnesses a new version of the *Furor Teutonicus,* which is all the more formidable since it is streamlined by the modern discoveries of mass psychology and controlled mass emotionalism, carried forward to its ultimate goal through a governmental technique of unparalleled efficiency and ruthlessness.

CONCLUSION

THE THIRD REICH AND THE WAR

Why War Was Inevitable

For a long time those apprised of the dynamic nature of National Socialism as a political religion could not fail to be haunted by premonitions as to the final outcome of the most gigantic experiment in mass control through emotionalism of which history knows. One by one the alternatives to war, offered with more than generosity through the "policy of appeasement," were discarded deliberately by the regime and war began to loom large as a certainty, although Hitler's shrewd tactics—in this age of stark naked opportunism curiously enough called diplomacy—left the world in suspense as to whom the German war juggernaut ultimately would be set in motion against. For economic as well as psychological reasons war was bound to come. If it was to be avoided Hitler was confronted with a task as formidable as that of winning any war. For years the Third Reich had bent every nerve, had strained every muscle on preparedness for the coming war. If the armament boom had been stopped, the artificial prosperity would have disappeared like a mirage. Controlled inflation would have become disastrously open inflation, and the scourge of unemployment could not have been banned by all the loans of the world. International markets are not capable of absorbing the products of the German industrial machine geared up, under the Four-Year Plan, to the highest pitch. Unemployment and inflation were the specters which stood behind a failure of the regime to obtain, by warlike pressure without going actually to war, what it aimed at, namely the redistribution of the riches of the world, in which the lion's share falls to Germany. Hitler had staked everything on one card. If it failed

the game was lost. Already in peacetime the Third Reich was built upon the abnormality of war economy. Abnormality is the only climate in which a "dynamic" regime can thrive. But abnormality cannot be continued forever. No nation—the docile, hard-working Germans not excepted—has the stamina to sustain it over an indefinite period. Hence, the only alternative to war-like pressure was war itself. On August 25, 1939, Hitler stunned the world by the announcement of a non-aggression pact with his arch-enemy Soviet Russia, in the stubborn confidence that once more the Western democracies would fail to honor their pledges to an ally and friend, and leave Poland to her fate. Trapped by his own policy Hitler had to choose war. On September 1, 1939, the German armies invaded Poland. On September 3, 1939, Germany was at war with England and France.

Germany under War Conditions

For obvious reasons there is little reliable information available about the internal conditions in Germany since the beginning of the war. On the whole it may be said that a society designed already in peacetime for serving the ends of totalitarian war needs few if any adjustments of its governmental structure and of the social conditions determining daily life in actual war. Germany has lived, during recent years, on the basis of blueprints which have successfully converted economic strength into military strength. Little more was needed except to deepen the lines drawn already before. Only a few items may be mentioned here. Food rationing is more strict and resembles closely the regulations prevailing in the last years of the World War. Control of radio reception is strengthened; listening in to foreign broadcasts is high treason; foreign papers printed in German are banned from circulation; men refusing to serve in arms are shot; the latent warfare between the churches and the regime has been called off; working hours, even for children below the age of twelve, have been increased; gold holdings have to be offered to the Government; Jewish doctors and technicians living abroad are invited to return to the "fatherland" on promise of repatriation and restoration of their confiscated property. Whether such offers are made more tempting by the announcement that separate bomb-proof shelters are designated for Jews and "Aryans" remains open to doubt. Moreover, to all appearances the army command sees to it that National Socialist propaganda in radio and press and other party activities is relegated to the back-

GREATER GERMANY 1940

Austria, Danzig, Sudetenland, Warthe-land, Hamburg, and the Saar territory are governed directly by the Reich (Reichsgaue).

Suwalki, Zichenau, and Kattowitz were incorporated into Prussia.

0 50 100 150 miles

Territorial expansion 1933 to 1940

Ceded by Munich pact 1938

Territory acquired by Hungary

Raisz

ground. Old-fashioned patriotism has precedence over National Socialism. But one need not be a prophet to forecast that, once the regime has converted its amazing military successes to date into a total victory, the National Socialist gospel, with all it implies, will be resurrected triumphantly as the magic force under whose spell the *Pax Germanica* has been won.

Reports coming from inside Germany seem to indicate that none of the ingenious devices for stimulating patriotic fervor seem to have succeeded in lifting the masses of the common man from the fatalistic apathy into which six years of relentless moulding of public opinion from above have plunged him. It is true that the younger generation too thoroughly imbued by Nazi indoctrination is willing to sacrifice themselves for what they are told and what they may believe to be the mission of the German nation. The conduct of the war to date has done much to strengthen the fanatical confidence of the leaders in ultimate victory and even to convince many of the disbelievers that the only right is might. Jubilantly they contrast German military mastery and diplomatic ingenuity with the hesitancy, incompetence and lack of vision of the old men whom Providence has placed at the helm of England in the darkest hours of her history. But it is equally true,—and how could it be otherwise?—that men and women who still remember slogans and techniques, illusions and delusions, sky-rocketing hopes and abysmal despair of the last war are haunted, amidst the bells ringing victory, by the ghosts of an ultimate defeat more catastrophic than in 1918.

Innovations in Governmental Structure

(a) Hitler's Eventual Successors. Two innovations of far-reaching importance have been added to the governmental structure proper of the Third Reich. In the first place, Hitler, in his speech before the Reichstag on September 1, 1939, named, in accordance with the Succession Act of 1934,[1] his eventual successors as the "Fuehrer" of the German Reich and people. The passages of his address containing this solution of a problem on which speculation has been ripe since the inception of the regime should be quoted *verbatim:*[2] "Should anything happen to me in the struggle then my first successor is Party Comrade Goering; my next successor is Party Comrade Hess. You would then be under an obligation to give to them as Fuehrer the same blind

[1] See *supra*, p. 426.
[2] Quoted from the (London) "Times" of September 2, 1939, p. 9.

obedience and loyalty as to myself. Should anything happen to Party Comrade Hess then by law the Senate will be called, and will choose from its midst the most worthy—that is to say the bravest—successor." Neither the authority which, in the absence of a "legitimate" "Fuehrer," would enact the law, nor the nature and character of this "Senate" are determinable at the present moment.

(b) The Supreme Defense Council. An equally important change in the constitutional structure of the Third Reich is the establishment of a permanent Council of Ministers for the Defense of the State,[1] copied ironically enough, it seems, from a Czechoslovak law of 1936. For the time of the present political tension abroad and "for the uniform management of the administration and economic affairs" a Ministerial Council is formed, under the chairmanship of Goering and comprising as permanent members the following men holding key-positions in the inner Government circles: Hess (Deputy-Leader of the "Fuehrer"); Dr. Frick (Minister of the Interior); Funk (Minister of Economics and President of the Reichsbank), the latter two styled "Plenipotentiary-General" *(Generalbevollmaechtigter)* for their respective functions; Dr. Lammers (Reich Minister and Chief of the Reich Chancellery); General Keitel (Chief of the Supreme Command of the Armed Forces). The chairman is empowered to add other members by co-optation. This new group may issue decrees with force of law "in case Hitler himself does not decree the passing of a law by the Reich Cabinet or the Reichstag." While this allusion to the Reichstag is a particularly blunt revelation of the rubber-stamp character of that body, the essential innovation consists in that a new agency of supreme legislative powers is installed, equal to the powers of the "Fuehrer" himself since the Council may pass what is called a law, according to the German word-magic, without consultation or co-operation of the Reich Cabinet or even the signature of the "Fuehrer" himself. No member of the inner circle of the directorate of the NSDAP is included in the group except Hess, a fact which is an additional indication of an at least temporary eclipse of the party. Once more the regime must be credited with having found a simple and happy solution for a fundamental difficulty which, during the last World War, beset the relations be-

[1] Edict of the Fuehrer concerning the formation of a Ministerial Council for Reich Defense, of August 30, 1939 (the exact quotation of the RGB. is not yet available in this country).

tween the political and the military leadership engaged in a constant tug-of-war behind the scenes. Two military men of importance are grouped together in the Council with four leading men of the civilian administration, thus guaranteeing, to all expectations, speedy and concerted action between the two branches concerned with internal administration under war conditions. No serious conflict between them is likely to arise while the "Fuehrer" himself is left free from administrative work, in order to devote his energies to the higher strategy in the political and military field.

Moreover, in December 1939 an effort was made to streamline even more the entire machinery of war economy by the creation of an Economic General Staff, called "General Council," through which Goering, as Economic Commander-in-Chief, is to marshal the entire economic resources of the Reich and its satellites for the successful conduct of the war. Members of the Council, in addition to military representatives, are the Secretaries of State (Undersecretaries) of the various Ministries concerned with economic matters.

Behind the Veil of the Future

What will be the future? Only history can tell. However, one may venture some prognostications not entirely devoid of factuality, when based on what is known of the techniques and ideologies of the Third Reich. One point should be emphasized. Even if war continues over a long period, it is more than unlikely that the regime will fall through internal rebellion or revolution. Anyone who is aware of the perfected instruments of mass domination, and of the determination of the ruling clique to use them when their hold over the people is threatened, will dismiss such hopes as wishful thinking, all predictions to the contrary. It should not be forgotten that a machine gun mounted on a tank can easily hold at bay an unarmed mass of rioters on a public square, and that a squadron of loyal airplanes can cow into submission a revolting town. Be it noted for those who may still delude themselves by facile historical parallels that this holds equally true for foreign lands under temporary or permanent occupation. In this age there is no chance of a "War of Liberation," once a country has come under the heel of the mechanized Attila. But no dictatorship has ever survived a lost war. It is, therefore, safe to predict that the people—and today the people are both the soldiers in arms and the housewives on the home

front—would rise against their masters only if the regime is shaken in its foundations by serious blows on the battlefield, and if at the same time Germany, which has not seen war-devastation inside her borders for more than a hundred years, experiences the full visitations of modern war on her own land. Revolution will occur, to all expectations, only if and when the victorious armies of the enemy powers pour into Germany and allow the people to burn out the regime to the roots. Once the people will rise against the regime staggering under the blows of a lost war no pen of a new Dante will be able to describe the horrors of the Day of Reckoning when hatred accumulated over many years will be unleashed against the gamblers of the National Socialist ruling class and its host of parasite underlings. Altogether idle is speculation as to what will be the shape of things to come after a German defeat, remote as it seems at this juncture. Will there be a Fourth Reich and can German unity be preserved after a lost war, or will Germany break, or be broken into her historical tribal units? Will Brown Bolshevism merely turn into Red Bolshevism, thus justifying Stalin's astute policies? Or can the Germans be induced, by generous peace conditions, to co-operate, as a free nation, perhaps under a restored monarchy, in the community of nations of a reborn Europe? The answers are in the lap of the Gods. Conversely, in this most crucial hour of Western civilization these things are certain: If Hitler wins the war against the West, the ideas of 1789, and with them the light of humanism, will be extinguished in Europe for a long time to come. The dawn of the "Germanic age," for which the prophets of the Third Reich sound already the trumpet, will be the nightmare of what may be left of the civilized world as we know it. It would be scarcely less calamitous if, the forces being even between a Nazi-dominated Europe and the Anglo-Saxon defenders, a stalemate ensues. Tantamount to a victory, it would entrench National Socialism even more strongly. But a Germany victorious also over Britain and the British Empire will impose upon the European sphere her political, economic, and spiritual hegemony under which the governmental techniques of the Third Reich as described in the preceding pages will serve as the blueprint for a lasting domination over the entire system of subjugated satellite nations, a "United States of Europe" held together by the clamps of modern despotism.

BIBLIOGRAPHICAL NOTE ON THE GERMAN POLITICAL SYSTEM

The preceding section on Germany is based almost exclusively on the original German sources, consisting of official publications as well as of treatises and commentaries on constitutional law. These are available only in a limited number of the large libraries in this country. Even if the material were on hand in the ordinary college libraries it is as a rule not accessible to the student, because of its highly technical character. For this reason the author has confined the footnotes to references of statutory sources and refrained from burdening them with secondary material. He prefers to present to both student and instructor a more comprehensive bibliography in a synoptical form which, on the whole, gives preference to books in English, the use of which is not curtailed by linguistic or technical difficulties. It should be noted, however, that the following suggestions contain only a selection of supplementary reading material.

A. GERMAN SOURCE MATERIAL

1. Official Publications and Periodicals

The texts of Federal (*Reich*) statutes, ordinances, decrees and similar official enactments are found in the Official Bulletin of Laws—*Reichsgesetzblatt*—(abridged: RGB.), divided, under the Weimar Republic, into Part I, dealing with matters of internal law, and Part II, containing the statutory material referring to international relations. In addition, the member states (*Laender*) publish Official Bulletins of their own for local matters affecting their territories only.

Since the advent of the Third Reich a very useful and systematically arranged collection of Federal (*Reich*) and the more important Prussian legislative enactments is contained in Werner Hoche, *Die Gesetzgebung Adolf Hitlers,* Berlin, appearing in regular intervals since 1933. For a synoptical survey one should consult a yearbook under the title *Jahrbuch des deutschen Rechts,* edited by Fr. Schlegelberger, W. Hoche and E. Staud. These volumes give a digest of selected cases, but no texts of laws.

Decisions of the Supreme Court (*Reichsgericht*) are published in two series of official reports dealing with civil and criminal law respectively (*Entscheidungen des Reichsgerichts in Zivilsachen* and *in Strafsachen*).

For a more intimate knowledge of the governmental practice and the theory behind political institutions the *Law Journals,* under the Empire and the Republic deservedly famed for their systematic approach and penetrating analysis, are indispensable. Under the Nazis these monumental scientific documentations have deteriorated to such an extent that their objective value is insignificant. Mention should be made of the *Juristische Wochenschrift; Deutsche Juristenzeitung* (discontinued in 1934); *Deutsche Justiz* (the official journal of the Ministry of Justice since 1933); *Deutsches Recht* (the official organ of publication of the Academy of German Law, a Nazi creation). Of other periodicals the *Archiv des öffentlichen Rechts* (now edited by H. Gerber, O. Köllreutter and F. A. Medicus) as well as the *Zeitschrift für die gesammte Staatswissenschaft,* both journals of established reputation already under the Empire, contain invaluable material; the former deals more with constitutional law proper, while the latter comes closer to the political science periodicals in this country and in England.

Another important source of information is the *Jahrbuch des öffentlichen Rechts,* again founded already under the Empire; the most eminent professors of law—political science forms a part of public law in Germany—contribute to it yearly surveys on the constitutional and political developments of the Reich and the *Laender.* Of these the comprehensive studies of Fr. Pötzsch-Heffter on constitutional events in the Reich in volumes XIII (1925), XVII (1929) and XXI (1933-34), the latter three dealing with the Weimar Republic, are first-rate. The contributions of A. Köttgen in volume XXIV (1937) and XXV (1938) are decidedly inferior to the work of his predecessor.

2. *Treatises and Commentaries Considered as Authoritative*

German legal and political science was famed in pre-Nazi times for the excellency of its treatises and commentaries, in many instances veritable *compendia* of authoritative character, used and quoted by the courts and by government agencies. Of outstanding reputation were:

(a) for the period of Imperial Germany:

P. Laband, *Staatsrecht des deutschen Reiches,* 4 volumes, Tübingen-Leipzig, 1901; a useful abridged version in one volume was published as 5th edition in Tübingen, 1909.

G. Meyer & G. Anschütz, *Lehrbuch des deutschen Staatsrechts,* 7th edition, Munich and Leipzig, 1919.

(b) for the period of the Weimar Republic:

G. Anschütz, *Die Verfassung des deutschen Reichs,* 4th edition, Berlin, 1933.

G. Anschütz & R. Thoma, *Handbuch des deutschen Staatsrechts,* 2 volumes, Tübingen, 1930-1932, containing 107 articles on all important subjects of constitutional law, written by the best specialists in the field.

The texts of statutes pertaining to the constitutional law of Imperial Germany and the early years of the Weimar Republic are conveniently grouped together in H. Triepel, *Quellensammlung zum deutschen Reichsstaatsrecht,* 3rd edition, Tübingen, 1922.

3. Other Literary Material Dealing with Government and Politics in Germany

The number of valuable monographs in pre-Nazi times is legion. The author may be permitted to mention his *Erscheinungsformen der Verfassungsänderung,* Tübingen, 1931, as the definitive treatise on the important problem of constitutional amendment and its ramifications into the entire fabric of public law.

Forever German legal and political science had a marked preference for a more dogmatic treatment of government in terms of constitutional law. There are few descriptive volumes dealing with what is considered as the "functional approach" in this country. Reference should be made, however, to the standard works on *Politik* by Treitschke, Roscher, Bluntschli and the three volumes of the *Handbuch der Politik,* Berlin-Leipzig, 1920, dealing with political conditions and institutions prior to the World War and during the latter. An important specimen of this approach is H. Delbrück, *Regierung und Volkswille,* Berlin, 1914 (translated under the title, *Government and the Will of the People,* New York, 1923). Last but not least, the writings of the greatest political thinker of modern Germany, Max Weber, should not be omitted from any survey of this kind. See his *Gesammelte politische Schriften,* Munich, 1921, particularly his contributions to the impending parliamentarization of the Reich.

B. MATERIAL WRITTEN IN ENGLISH

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A. W. Ward, *Germany 1815-1890,* Cambridge (England), 1916.

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2. The Empire under the Bismarckian Constitution and the World War:

B. E. Howard, *The German Empire,* New York, 1906.
F. K. Krüger, *Government and Politics of Germany,* New York, 1915. A satisfactory though very pedestrian treatment of the political institutions under the Bismarckian Constitution.
A. L. Lowell, *Government and Politics of Continental Europe,* volume I. Considered as the classical discussion of pre-War Germany, valuable from the viewpoint of comparative political science, but devoid of real insight into the sociological structure of the Empire and its political forces.
Th. Wolff, *The Eve of 1914,* New York, 1936. A masterly panorama of the political and diplomatic trends inside Germany before the outbreak of the World War, by the former editor-in-chief of the liberal *"Berliner Tageblatt."*
A. Mendelssohn Bartholdy, *The War and German Society,* New Haven, 1937. The "testament of a Liberal"; though unfinished, replete with knowledge of the capitalistic structure of German social life during and after the War.
A. Rosenberg, *The Birth of the German Republic, 1871-1918,* London, 1931. In spite of the misleading title a well-documented analysis of the social and political forces of the Empire and of the collapse of the Empire under Ludendorff's dictatorship, by a German historian of the Left.

English translations of the text of the Imperial Constitution of 1871 are found in W. F. Dodd, *Modern Constitutions,* volume I, Chicago-London, 1909, and in W. F. Wright, *The Constitutions of the States at War, 1914-1918,* Washington, 1919.

3. The Revolution of 1918 and the Weimar Constitution:

F. Blachly & M. Oatman, *The Government and Administration of Germany,* Baltimore, 1928. Well-balanced and amply documented descriptive analysis of the Weimar Republic during its first decade, seemingly the best treatment of the subject in English.
H. Finer, *Theory and Practice of Modern Government,* 2 volumes, London, 1932. A standard work on comparative government before 1933, of incomparable solidity and with ample information on the operation of German parliamentarism.
H. Quigley and R. T. Clark, *Republican Germany,* London, 1928. Of first-rate importance in demonstrating that Republican Germany was on the way to regaining peacefully her position among the nations and restoring her internal equilibrium in spite of the Treaty of Versailles.

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These books, written mostly before the depression of 1929, should be consulted when endeavoring to form an opinion on the ultimate chances of the German Republic. Later discussions are apt to be influenced by the failure of Republican Germany to cope with the economic depression.

A. Rosenberg, *A History of the German Republic,* London, 1936. Unduly biased against the Social Democrats but with good judgment on the basic shortcomings of the bourgeois governments and parties. Rather sketchy for the period after 1930.
J. Mattern, *Principles of Constitutional Jurisprudence of the German National Republic,* Baltimore, 1928.
R. E. Emerson, *State and Sovereignty in Modern Germany,* London, 1928.

The two foregoing books are first-rate statements on the Weimar Republic from the viewpoint of the constitutional lawyer.

H. G. Heneman, *The Growth of Executive Power in Germany,* Minneapolis, 1934. A good monograph.
H. Kraus, *The Crisis of Germany Democracy,* Princeton, 1932. Much referred to in this country. Superficial and frequently misleading.
L. Rogers (and others), "Aspects of German Political Institutions," *Political Science Quarterly,* Vol. 47 (1932), pp. 321 ff.; 576 ff. An effort to combine constitutional analysis with the "functional approach." Useful but not altogether reliable.
N. Reich, *Labor Relations in Republican Germany,* New York, 1938. Careful and objective study on the improvement of the relations between capital and labor under the Weimar Constitution.
Antonia Vallentin-Luchaire, *Stresemann,* New York, 1931. A sympathetic biography of the great Republican leader.
J. H. Wheeler-Bennett, *Hindenburg, the Wooden Titan,* London, 1936. Excellent biography of the German idol.
J. K. Pollock, *German Election Administration,* New York, 1934.
F. M. Watkins, *The Failure of Constitutional Emergency Powers under the German Republic,* Cambridge, 1939.
Jerome G. Kerwin, "The German Reichstag Election of July 31, 1932," *American Political Science Review,* Vol. 26 (1932), pp. 921 ff.
H. L. Childs, "The German Presidential Elections of 1932," *American Political Science Review,* Vol. 26 (1932), pp. 486 ff.

Lee S. Greene, "Direct Legislation in the German Länder," *American Political Science Review,* Vol. 27 (1933), pp. 445 ff.
F. A. Hermens, "Proportional Representation and the Breakdown of German Democracy," *Social Research,* Vol. 3 (1936), pp. 441 ff.
F. A. Hermens, "The Trojan Horse of Democracy," *Social Research,* Vol. 5 (1938), pp. 379 ff.

English translations of the text of the Weimar Constitution are found, among others, in Blachly & Oatman, *op. cit.,* pp. 642 ff.; H. L. McBain & L. Rogers, *The New Constitutions of Europe,* New York, 1922; M. W. Graham, *New Governments of Central Europe,* New York, 1926. See also A. Headlam-Morley, *The New Democratic Constitutions of Europe,* London, 1926, and A. J. Zurcher, *The Experiment with Democracy in Central Europe,* New York, 1933 (the latter a sound treatment of the Weimar Constitution in comparison with other democratic constitutions of the European post-War period).

4. The Third Reich

(1) Every student of Nazi Germany should thoroughly acquaint himself with the bible of the Third Reich, Adolf Hitler's *Mein Kampf,* Munich, 1925-26, 2 volumes (with many later editions, partly expurgated and polished). The German standard edition contains the two volumes in one. Two unabridged English editions are now available, one published by Reynal and Hitchcock, New York, 1939, with explanatory (and rather superfluous) notes by the editors, the other published by Stackpole Sons, New York, 1939. No translation, however, can convey the atmosphere of this remarkable book; written in the crudest of German styles, it contains, next to semi-delirious divagations of a half-baked and thoroughly uneducated mind, passages of uncanny insight into the mass mind and social psychology which will retain their interest for a long time to come.

The Program of the National Socialist Party (the Twenty-five Points of 1920) is found in English translation, among others, in Lichtenberger, Schuman, Hill and Stoke, Rappard (for quotations see *infra*).

An invaluable source of direct information on conditions inside Germany under the Nazi regime provide the *Deutschlandberichte,* the Monthly Reports by the Executive Committee of the Social Democratic Party of Germany, gathered from hundreds of individual reports within Germany and relayed over the frontier; they are printed for private circulation only.

(2) The following books deal with the intellectual background and the spiritual ingredients of the National Socialist "world outlook."

(*a*) *Among the Nazi sources are the most important:*

Joseph Göbbels, *My Part in Germany's Fight,* London, 1935.
Hermann Göring, *Germany Reborn,* London, 1934.

The names of the authors testify to the value of their contributions.

Alfred Rosenberg, *Der Mythus des XX. Jahrhunderts,* 4th edition, Munich, 1932. Considered as the standard philosophical foundation of racism and integral nationalism, a high-falutin' compilation of historical distortions and plagiarisms.

A. Möller van der Bruck, *Das Dritte Reich,* Berlin, 1923 (English translation, New York, 1934). Perhaps the most important intellectual source of National Socialism, written by a genuine thinker with honesty and straightforwardness.

H. St. Chamberlain, *Die Grundlagen des 19. Jahrhunderts,* Munich, 1899 (many later editions). Basis of the anti-Semitic theories of the regime.

(*b*) *By opponents of the Nazi regime:*

H. Rauschning, *The Revolution of Nihilism,* New York, 1939. A much-admired though decidedly overrated account of a former Nazi sympathizer who, after a brief experience with Nazi politics as the President of the Senate of Danzig, severed connections with the regime. The author accepts political opportunism of the Nazi leadership as a diabolic plan and overestimates the values of conservative Nationalism as an alternative to Nazi "Nihilism."

H. Rauschning, *The Voice of Destruction,* New York, 1940. Claims to contain conversations with Hitler prior to the accession to power and in the years of 1933 and 1934.

K. G. W. Lüdecke, *I Knew Hitler,* New York, 1937. A vivid description, by another Nazi renegade, of the deliberate technique of the National Socialists employed in undermining the democratic institutions of the Weimar Republic, more revealing of Nazi gangsterism than Rauschning's heavy Teutonic intellectuality.

A. Kolnai, *The War Against the West,* New York, 1938. Demonstrates, on the basis of remarkable knowledge of the literary sources, the mystical and tribal nature of Nazism as an emanation of German irrationalism.

Edmond Vermeil, *Doctrinaires de la révolution Allemande,* Paris, 1938. An admirable study, by a recognized French authority, on the spiritual forces shaping the ideology of National Socialism.

The standard biographies of Hitler and the Nazi movement by anti-Nazis:

K. Heiden, *A History of National Socialism,* London, 1931.

K. Heiden, *Adolf Hitler,* 2 volumes, Zürich, 1936-7 (in German). Indispensable analysis by one of the best experts of Nazism.

R. Olden, *Hitler,* London, 1936. Scarcely less important than Heiden's books.

L. L. Snyder, *From Bismarck to Hitler,* Williamsport, 1935. The background of German nationalism.

F. A. Voigt, *Unto Caesar,* London, 1938. A masterly introduction to the causes of the post-War crisis, by the well-known correspondent of the *Manchester Guardian.*

(3) For the period of transition from Weimar to Hitler:

R. T. Clark, *The Fall of the German Republic,* London, 1935. Decidedly the best appreciation of the achievements and failures of Weimar, with a penetrating analysis of the political causes of its fall.

E. A. Mowrer, *Germany Puts the Clock Back,* new edition, New York, 1939. The classical account of the rise of National Socialism, by an eye-witness with genuine sympathies for and understanding of the German people.

C. B. Hoover, *Germany Enters the Third Reich,* New York, 1933.

Douglas Reed, *The Burning of the Reichstag,* New York, 1934.

(4) Of the constitutional jurisprudence of the Third Reich, by Nazi dogmatists (the official "doctrine" of National Socialism, frequently referred to in the preceding chapters) only the following considered as standard works are mentioned:

E. R. Huber, *Verfassung,* Hamburg, 1937.

Th. Maunz, *Verwaltung,* Hamburg, 1937.

O. Köllreutter, *Deutsches Verfassungsrecht,* 3rd edition, Berlin, 1938.

O. Köllreutter, *Deutsches Verwaltungsrecht,* 2nd edition, Berlin, 1937.

O. Meissner & G Kaisenberg, *Staats- und Verwaltungsrecht im dritten Reich,* Berlin, 1935. Written by two high civil servants, formerly convinced Democrats.

(5) On National Socialist law and legal institutions, as seen by foreigners:

R. Bonnard, *Le droit et l'état dans la doctrine National Socialiste,* Paris, 1936.

H. Mankiewicz, *Le National Socialisme Allemand, ses doctrines et leurs réalisations,* Paris, 1937.

K. Loewenstein, "Law in the Third Reich," *Yale Law Journal,* vol. 45 (1936), pp. 779 ff.

K. Loewenstein, "Dictatorship and the German Constitution," 1933-1937, *University of Chicago Law Review,* vol. 4 (1937), pp. 537 ff.

L. Preuss, "Germanic Law versus Roman Law in National Socialist Legal Theory," *Journal of Comparative Legislation and International Law,* vol. 16 (1934), pp. 269 ff.

The foregoing discussions are based on the original German source material. R. Bonnard's presentation is more sympathetic to the Nazi viewpoint than that of the others.

(6) Descriptions of Nazi Germany, its institutions and its intellectual environment, by foreign observers and by emigres, are legion. In view of the fascination of the subject most of these reports make good reading. Some of them are able and realistic. Few if any penetrate deeply enough into the hidden layers of German irrationalism and almost all suffer from lack of experience with the particular technique of German constitutional jurisprudence. The following enumeration is merely selective:

(a) *By foreign observers, with a willingness for objectivity:*

Stephen H. Roberts, *The House that Hitler Built,* New York, 1937. To many, including the present writer, the best existing reportage on Nazi Germany. Well-informed, observant, colorful, and on the whole undeceived by Nazi semantics.

H. Lichtenberger, *The Third Reich,* New York, 1937. By one of the leading experts in German intellectual history and life.

F. L. Schuman, *The Nazi Dictatorship,* 2nd edition, New York, 1936. Brilliantly written though misled by the too facile psychoanalytical approach.

J. K. Pollock, *The Government of Greater Germany,* New York, 1938. Comprehensive survey though occasionally taking the form for the substance.

F. A. Ogg, *European Governments and Politics,* 2nd edition, New York, 1939, pp. 605-800. A valuable description, though based exclusively on secondary material.

(b) *By German authors of anti-Nazi attitude:*

F. M. Marx, *Government in the Third Reich,* 2nd edition, New York, 1937.

F. Ermath, *The New Germany,* Washington, 1936.

Albert C. Grzesinski, *Inside Germany,* New York, 1939. By a former Socialist Prussian Minister of the Interior, self-revealing as far as the period of the Republic is concerned.

(7) On National Socialist economics:

M. Ascoli & A. Feiler, *Fascism for Whom?* New York, 1938. Feiler's discussion of Nazi politics and economics is one of the best treatments of the subject.

"Four Years of Nazi Economic Policies," *The Banker,* issue of February, 1937.

Germanicus: The Last Four Years, New York, 1937.

V. Trisanovitch, *Economic Developments of Germany under National Socialism,* New York, 1937. Useful survey dealing with the period prior to the Four-Year Plan.

G. Reimann, *The Vampire Economy,* New York, 1939. Describes the plight of the business man under Nazi economy.

W. F. Bruck, *Social and Economic History of Germany from Wilhelm II to Hitler,* New York, 1938. Useful for a comparison of "liberal" with regimented economy.

C. W. Guillebaud, *Economic History of Germany, 1933-1938,* London, 1939.

J. B. Holt, *German Agricultural Policy, 1918-1934,* Chapel Hill, 1936.

N. A. Pelcovits, "The Social Honor Courts of Nazi Germany," *Political Science Quarterly,* vol. 53 (1938), pp. 350 ff.

H. J. Heneman, "German Social Honor Courts," *Michigan Law Review,* vol. 37 (1939), pp. 725 ff.

Taylor Cole, "The Evolution of the German Labor Front," *Political Science Quarterly,* vol. 52 (1937), pp. 532 ff.

F. Wunderlich, "Germany's Defense Economy and the Decay of Capitalism," *Quarterly Journal of Economics,* vol. 52 (1938), pp. 401 ff.

(8) On Nazi terror and persecution and the Political Police:

Balticus, "The Two G's: Gestapo and GPU," *Foreign Affairs,* vol. 17 (1939), p. 489 ff. By an anonymous author, evidently with inside knowledge.

Eva Lips, *Savage Symphony,* New York, 1938. A most impressive record of Nazi persecution without violence, by the wife of a German scientist.

G. Seger, *A Nation Terrorized,* Chicago, 1935.

K. Billinger, *Fatherland,* New York, 1935.

W. Langhoff, *Die Moorsoldaten,* Zürich, 1933.

Three authentic descriptions of the concentration camps.

(9) On the Jewish problem:

M. Lowenthal, *The Jews in Germany,* New York, 1936.

J. G. McDonald, *Letter of Resignation and Petition,* addressed to the XVIIth Plenary Assembly of the League of Nations. The classical indictment of anti-Semitism of the Third Reich.

(10) On education, religion and the cultural situation under National Socialism:

All books on religion under the Third Reich tend to overestimate the importance of religious problems for modern Germany.

A. S. Duncan-Jones, *The Struggle for Religious Freedom in Germany,* London, 1938.

A. Frey, *Cross and Swastika,* New York, 1938. Deals only with the Protestant question.

W. Gurian, *Hitler and the Churches,* London, 1936.

N. Micklem, *National Socialism and the Roman Catholic Church,* New York, 1939.

Michael von Faulhaber, *Judaism, Christianity and Germany,* New York, 1934. The famous Christmas sermons of the militant Munich Cardinal.

H. L. Childs, *The Nazi Primer,* New York, 1938. Reproduction of a Nazi textbook for primary schools.

B. von Schirach, *Die Hitler-Jugend, Idee und Gestalt,* Berlin, 1934. By the "leader" of the Hitler Youth.

E. Y. Hartshorne, *The German Universities under National Socialism,* Cambridge (Mass.), 1937. An excellent account of the devastation of the universities since the advent of the Third Reich.

H. Bigot, *La chambre de culture allemande dans le régime totalitaire du III^e Reich,* Paris, 1937.

(11) On special subjects mostly dealing with governmental institutions:

A. J. Zurcher, "The Hitler Referenda," *American Political Science Review,* vol. 29 (1935), pp. 91 ff.

J. K. Pollock & A. V. Boerner, *The German Civil Service Act,* Chicago, 1938.
A. Lepawsky, "The Nazis Reform the Reich," *American Political Science Review,* vol. 30 (1936), pp. 324 ff.
R. H. Wells, "The Liquidation of the German Länder," *American Political Science Review,* vol. 30 (1936), pp. 350 ff.
C. H. Wilson, "Hitler, Göbbels, and the Ministry of Propaganda," *Political Quarterly,* vol. 10 (1939), pp. 83 ff.
A. V. Boerner, "The Position of the NSDAP in the German Constitutional Order," *American Political Science Review,* vol. 32 (1938), pp. 1059 ff.
H. Rosinski, *The German Army,* New York, 1940.

(12) Of special interest and frequently more illuminating on daily life under Nazi rule than most books devoted to the description of political institutions are the reports of visiting newspapermen and non-professional observers, some of them in novelistic form:

Nora Waln, *Reaching for the Stars,* Boston, 1939.
Margaret Kent, *I Married a German,* New York, 1938.
G. E. R. Gedye, *Betrayal in Central Europe,* New York, 1939.
John Gunther, *Inside Europe,* new edition, New York, 1939.
Ch. W. Domville-Fife, *This Is Germany,* London, 1939.
Martha Dodd, *Through Embassy Eyes,* New York, 1939.
Ethel Vance (pseudonym), *Escape,* Boston, 1939.

(13) English translation of some important pieces of National Socialist legislation are found in:

J. K. Pollock and J. H. Heneman, *The Hitler Decrees,* 2nd edition, Ann Arbor, 1934.
W. E. Rappard (and others), *Source Book on European Governments,* New York, 1937.
N. J. Hill and H. W. Stoke, *The Background of European Governments,* new edition, New York, 1939, pp. 373-468.
W. C. Langsam, *Documents and Readings in the History of Europe Since 1918,* New York, 1939, pp. 646-738.

THE GOVERNMENT AND POLITICS OF ITALY

BY *Arnold J. Zurcher*

CHAPTER I. THE LIBERAL CONSTITUTIONAL MONARCHY

The Unification of Italy

Progress towards Unification. The historian of the nineteenth century will never cease to marvel at the remarkable chain of events which in less than a dozen years transformed the Italian peninsula from a welter of political jurisdictions into a modern national State. In 1859 Italy was still, to use Metternich's phrase, "a geographical expression." The Italian people owed allegiance either to Austria or to one of a half dozen petty ruling houses, only one of which, that of Savoy, sovereign in the Kingdom of Piedmont,[1] was regarded as Italian in character. Yet within less than two years the process of amalgamating this political welter into a single kingdom, under the aegis of Piedmont and the House of Savoy, had already been virtually accomplished. Austria had been compelled to give up Lombardy and that rich region had voted to join Piedmont; Modena, Parma, Tuscany, and the Emilia had thrown off their former rulers and followed Lombardy's example; Francis II, the Bourbon King of the Two Sicilies, had been driven out of Naples and the entire southern part of the peninsula had imitated the more northerly regions; and on March 17, 1861, before a national Parliament at Turin, Victor Emmanuel II, King of Piedmont, had proclaimed the existence of the Kingdom of Italy. Four more years and the new kingdom, as an ally of Bismarck in his war against Austria, had emerged with Venetia as its share of the victor's spoils; and then in September, 1870, following the withdrawal of the French garrison near Rome, that city had been taken from the Pope by force and proclaimed the capital of an Italian State which embraced the entire peninsula.[2]

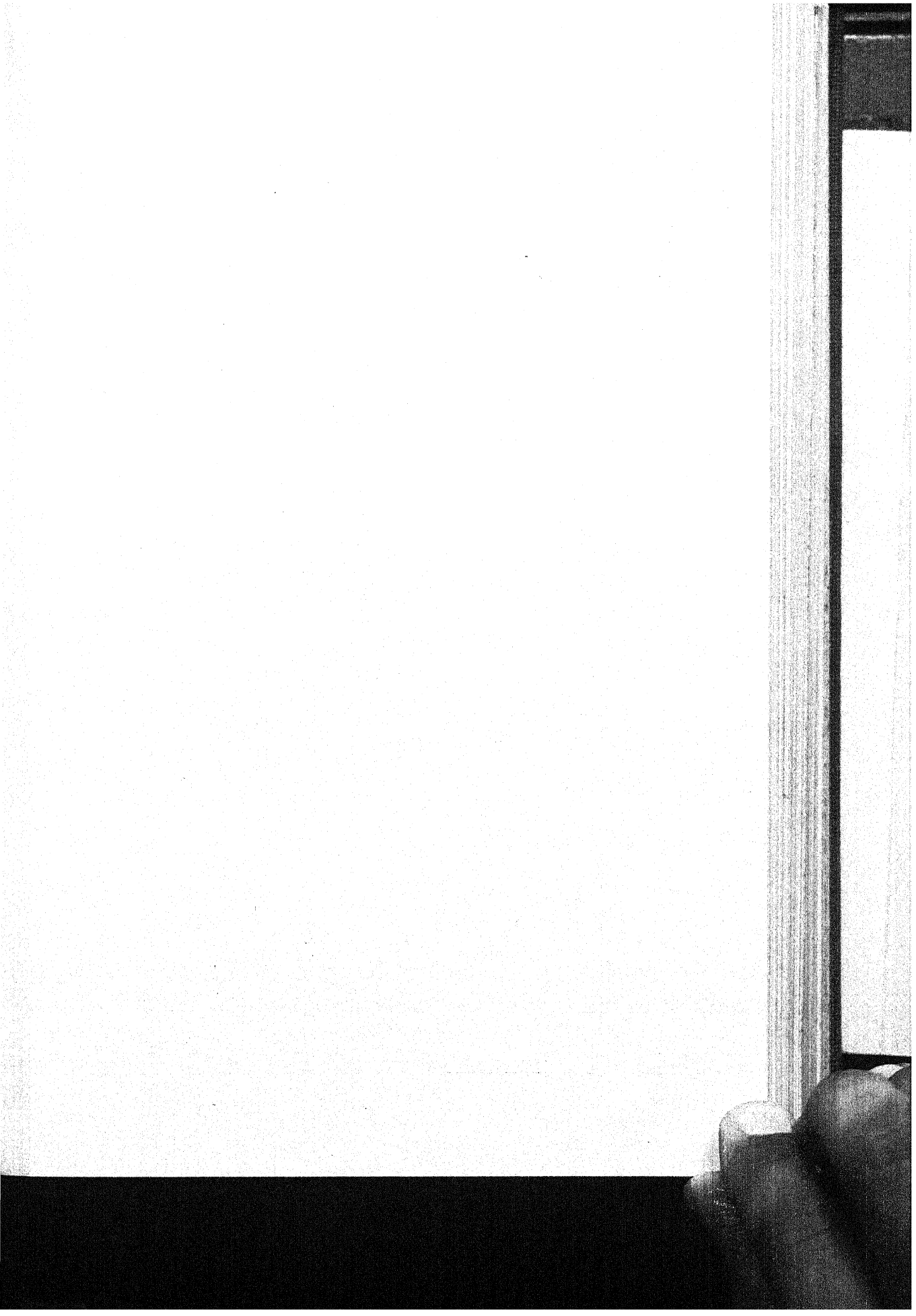
[1] Technically the Kingdom of Sardinia. The dukes of Savoy became kings of Sardinia in 1720 upon the acquisition of the Island of Sardinia. Piedmont, however, was the Sardinian King's most important territory and his government was located at Turin, Piedmont's chief city.

[2] On the unification of Italy see Bolton King, *A History of Italian Unity*, 2 vols. (London, 1899) and W. R. Thayer, *The Dawn of Italian Independence*, 2 vols. (Boston, 1893).

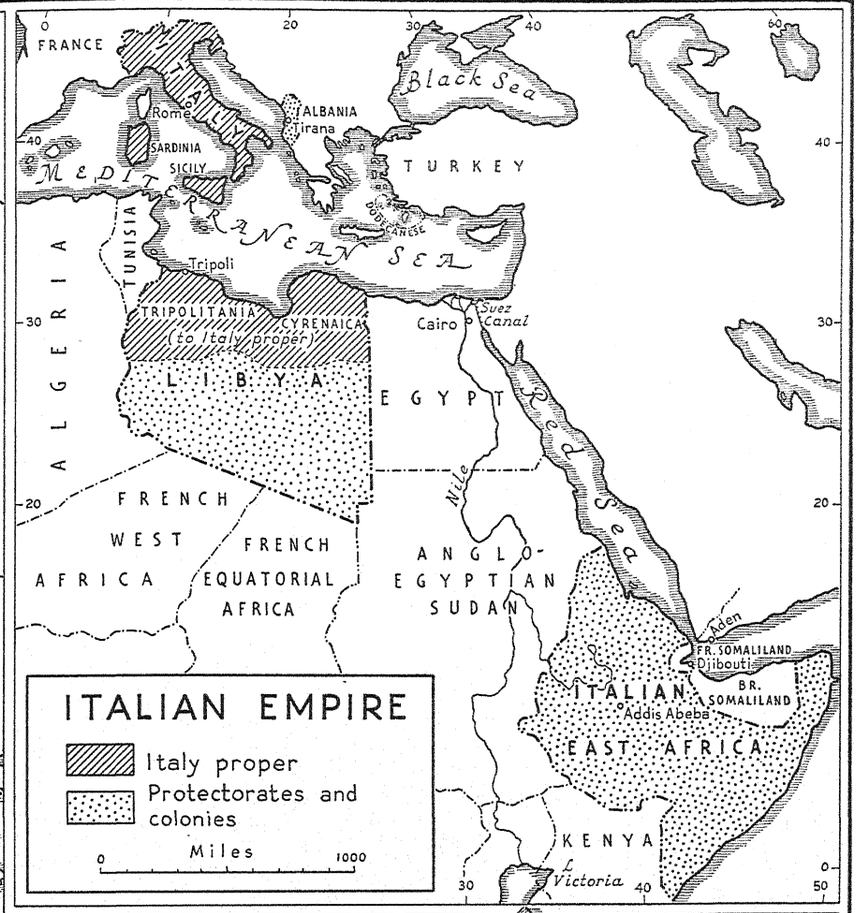
Earlier Efforts at National Union. Though achieved with such amazing celerity, the unification of Italy was not merely the result of fortuitous events. In the early part of the sixteenth century, Niccolò Machiavelli, the great Florentine, had pleaded earnestly for the expulsion of the foreign ruler from the peninsula and the consolidation of all its people under a single Italian prince. Generations of patriots since Machiavelli's time had actively sought by one means or another to realize his hope; and Italian literature is studded with the names of those who thereafter contributed patriotic inspiration in prose and poetry. Napoleon Bonaparte, invader and conqueror though he was, brought the French vision of national fraternity to all of Italy between 1796 and 1815. In southern and most of northern Italy, he created nominally independent kingdoms and made common to much of the peninsula the advanced legal and administrative systems which had been perfected in France. The impetus to nationalism thus fostered lost little of its force even after the Congress of Vienna sought in 1815 to undo in Italy and in Europe all that the Corsican had done. Thus long before national unity became a reality, its foundations had been firmly established.

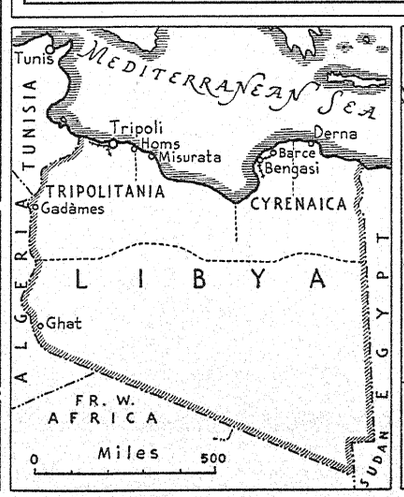
Chief Protagonists of Unification. Chief responsibility for the actual success of the movement for unity is, however, rightly attributed to the four principal actors in the drama. The first of these is Victor Emmanuel II, King of Sardinia-Piedmont and the first King of the united nation. Victor Emmanuel is revered by all Italians for the patriotism which prompted him to pledge the fortunes of his dynasty to the great cause, and for the moral and material aid he constantly extended to those actively engaged in furthering that cause.[1] No less important than the King was the nineteenth-century mystic and revolutionary, Giuseppe Mazzini. Through his writings and correspondence, his creation of the famous "Young Italy" movement, and his numerous conspiracies against foreign and, particularly, Austrian rule, Mazzini did much to renew Italian patriotism after 1821 and to instill hatred of foreign control in the Italian youth. Perpetually coupled with his name is that of Giuseppe Garibaldi. His was the contribution of the practical crusader and of the adventurous military filibusterer. It was Garibaldi's motley army of red-shirted volunteers, the legendary "Thousand," which conquered Sicily in 1861 and helped materially to bring about the downfall and expulsion of the Bourbon dynasty in southern Italy. Garibaldi also led in

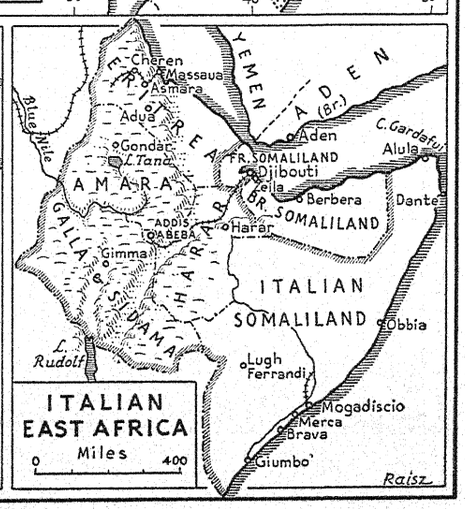
[1] E. Dicey, *Victor Emmanuel* (New York, 1886).

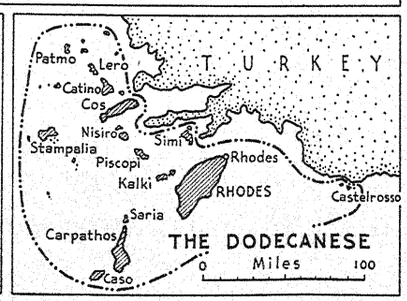


ITALY
and the Italian Empire in
1940









only a very small number—less than one per cent of the whole —professing other faiths.

National Diversity. But the new State also had many serious weaknesses. In the first place the population was not nearly so homogeneous as statistics might indicate. Although Italians had possessed a national literary language since the days of Dante, the dialects used by the common folk of the various regions differed greatly. Then, too, northern and southern Italians, owing to diverse racial origins and admixtures, differed remarkably in physical and even in psychological attributes. More remarkable still was the difference in the intellectual level and political capacity of the people of these two areas. Piedmontese, in touch with the currents of nineteenth-century European thought and far advanced commercially and even industrially, were perhaps as enlightened and politically as mature as the French across their borders. So, too, were the inhabitants of Tuscany, the "cradle" of the Renaissance, of the former duchies, and of Lombardy and Venetia. But the people of southern Italy had known little but despotic personal government and economic vassalage for centuries, with results all too plainly revealed in the moral and social outlook of the peasantry. Neapolitans and Sicilians especially were among the most backward peoples in Europe. Illiterate, living for the greater part in the most abject poverty, subjected as late as the middle of the nineteenth century to the benighted and scandalously corrupt government of the Spanish Bourbons, a government which Gladstone had once described as the "negation of God," they were fitter subjects for misgovernment than for government. Conditions in Campania, Basilicata, and Sicily were so bad that for more than a generation after its inauguration the government of the united kingdom had to cope with a "southern Italian" problem, with the special problem of combating brigandage and of raising the elementary economic, intellectual, and moral level of the inhabitants.

Local Particularism. The subjects of the new kingdom were also locally minded to an intense degree. Florentines were proud of the fact that they were Tuscans; Venetians could not forget the glories of their ancient republic; and many a Torinese looked with sorrow and anger upon the reduction of his erstwhile sovereign state to mere provinces of a greater kingdom. In the Parliament of a united Italy it was to be uncommonly difficult for the representatives of these and other areas to place national before regional interests and to subordinate local to national

patriotism. In many instances, indeed, regionalism was to prove so strong a factor that political parties were organized along purely local lines. It was a condition for which geography was partly responsible. Isolated by mountains and even by the sea, the Italian was foreordained by nature to be somewhat parochial in his political loyalties. But history, too, had played its part. The centuries of political division and the consequent lack of commercial and cultural intercourse had necessarily fostered local patriotism and inhibited the growth of a broadly national and cosmopolitan outlook.

Enmity of the Church. In gaining unity, moreover, Italy had seriously offended the Catholic Church. The creation of a national state had necessarily required the destruction of the Church's temporal power over Rome and central Italy; and the forcible entry into these areas of Italian troops had seemed to the Head of the Church an unforgivable act. After 1870 he secluded himself in the Vatican palace, a self-declared prisoner; and all over Italy the faithful were admonished to refrain from active collaboration with the authorities of the new Government.

Economic Weaknesses. In addition to all this the new nation was poor, at least in those economic resources out of which material might is built. Industry had been barely started in the northern cities. The country lacked capital for industrial development as well as the elementary industrial raw materials such as coal and the basic metals. By far the larger portion of the population was engaged in agriculture, from which returns were considerably below the standard of productivity maintained elsewhere. Except in the valley of the Po River, in Campania, on the Apulian table-land, and in certain Sicilian areas, Italian soil is poorly adapted to agriculture. Much of it is entirely unproductive, being mountain or marshland; much of the remainder is distinctly below par in fertility. Deforestation of mountain slopes in the past has caused serious erosion in many districts and increased the hazard of flood. Allied with nature in reducing agricultural productivity is a notorious system of land tenure. Along the Po and in southern Italy most of the arable land is embraced in huge estates known as the *latifundia.* The peasants work on these estates as sharecroppers or as day laborers; and their economic condition even today is as wretched as that of any agricultural laborer in Europe. For such a poor country even nominal taxation was a burden; but taxation in some parts of Italy had

been abnormally high for many generations and most of it had been of a direct character. Moreover the formation of a single national exchequer offered little immediate relief, because the Government of united Italy, besides having to pay its own increasingly burdensome way, had also assumed the obligation of discharging the debts of the previous political regimes of the peninsula.

Future None too Promising. To realize the promise of Italy as a great power under such circumstances as these and to find for her an honorable place in the family of nations was to be a stupendous and difficult responsibility. In the half century which elapsed after unification, that responsibility was only indifferently discharged. Moreover the political system which the new Italy evolved never quite achieved the stability which characterized the governments of the older and better established states of Western Europe. Indeed, some 60 years after unification, the Italian political system was radically transformed by revolution under the name of Fascism. It is our purpose in the remainder of this and in the succeeding chapter to trace the evolution of the Italian political system from 1870 to 1925, the year in which the transformation occurred.

The Government of Liberal Italy

The Statuto. The political system of united Italy was largely taken over from Piedmont. During his long tenure as Piedmontese prime minister, Cavour had succeeded in giving that political system a thoroughly liberal cast. Its legal basis was the *Statuto fondamentale del regno.* This document, modeled along the conservatively liberal lines of the French and Belgian Constitutions of 1830, had been granted by Piedmont's king, Charles Albert, in March, 1848, as a concession to the revolutionary spirit which in that year swept over Piedmont as well as over the rest of Europe. Unlike the heads of the other Italian states of the day who had also been compelled to issue written constitutions, Charles Albert did not suspend or abolish his instrument when the inevitable reaction to revolution set in. Upon Charles Albert's abdication in 1849, moreover, his son and successor, Victor Emmanuel II, gave his promise to continue the *Statuto.* The new King's fidelity to this promise, maintained despite efforts of Austria and legitimist Europe to compel him to break it, earned for him the popular title of *"re galantuomo"* (the king who was an honest man).

The Kingship. The nominal center of authority under the *Statuto* was the King. Victor Emmanuel II occupied this office first as King of Piedmont and then as King of united Italy until 1878. His successor, Humbert I, reigned until 1900, when he in turn was succeeded by his son Victor Emmanuel III. Owing to the usages developed by Cavour as prime minister, the King's position had gradually come to be comparable to the position of the British monarch. The Italian King's constitutional prerogatives were discharged by ministers whom he appointed and dismissed not as his personal wishes might dictate but according to the political will of Parliament. It would be a mistake, however, to identify the Italian kingship too closely with the position of constitutional irresponsibility developed for monarchy in Britain towards the close of Victoria's reign. National traditions and an undisciplined and somewhat chaotic party structure frequently made it possible for King Victor Emmanuel II and his successors to modify the course of public policy and control even the personnel and tenure of the ministries.[1] As we shall see later, it was the personal wishes and formal action of King Victor Emmanuel III, and not the wishes of his ministers or Parliament, which brought Signor Mussolini's Cabinet into power in 1922 and thus paved the way for the Fascist Revolution.[2]

Parliament: Composition of the Deputies. Parliament was bicameral, consisting of a Chamber of Deputies and a Senate. The membership in the first of these two houses was secured through popular elections conducted until 1919, except for a brief interval, in constituencies each returning a single deputy. By the time of the World War the deputies numbered 535. The franchise was originally rather carefully restricted, being limited by rather high property and direct-tax qualifications. The total eligible to vote in 1870 did not exceed 500,000.[3] Successive liberalizations of the franchise law in 1882 and in 1912 gradually increased the electorate; and by 1919, when a third electoral reform bill was enacted, Italy attained universal manhood suffrage.

Electoral Abuse. The most liberal franchise provisions, however, did little to correct an electoral abuse from which Italy suf-

1 For early examples of royal intervention, see King, *op. cit.*, II, pp. 233, 253, 334 and 360-361. On the other hand note also the adherence of Victor Emmanuel II to the electoral and popular will in his acceptance of the first Depretis Cabinet in 1876; see p. 588.

2 See p. 617.

3 King, *op. cit.*, II, p. 307.

fered throughout the post-Cavourian period. This was the habit of governmental interference with electoral freedom. By exploiting official prestige, political favors, money, and sometimes tactics which savored of physical compulsion, national ministers, deputies, and local governmental officials exerted an unblushing control over those privileged to vote. Rare indeed was the ministry which did not yield to the temptation to use these convenient methods of insuring parliamentary majorities; and rarer still were the occasions when such methods, having been resorted to, failed to return a majority to the Chamber favorable to the Government of the day. "Working the elections" became a habit which even the most high-minded statesmen were unable to eradicate. Other European states, suffering from the same evil, attempted more or less successfully to combat it towards the end of the nineteenth century; in Italy, however, it persisted well into the twentieth and became a standing reproach to the political morality and capacity of the nation.

The Senate. The Senate, or second chamber of Parliament, consisted of persons nominally appointed by the King but actually chosen by the ministry. The persons appointed had to be selected from some 21 categories of Italian subjects. These included important clerics, past presidents of the Chamber of Deputies, deputies, ministers, ambassadors, chief judges, high officials of the public forces, and holders of important positions in the permanent civil service; members of the Royal Academy of Sciences and of the Superior Council of Public Instruction; persons who paid at least 3000 lire annually in direct property or business taxes; and persons who, because of their public services or high individual merit, deserved to be honored by their country. Senatorial tenure was for life. Princes of the royal house became members of the Senate as a matter of right at the age of 21 and were given a vote in its deliberations at the age of 25.[1] Although there was no limit to the number of Senators, the total membership of the upper chamber rarely exceeded 425.

Parliamentary Organization and Procedure. In matters of organization and procedure the two houses strongly resembled the equivalent parliamentary chambers in France. The King named the president of the Senate while the Chamber elected its own presiding officer. These officials generally acted in a non-partisan manner. Legislation was introduced both by private members

[1] For the provisions relating to the Senate, see *Statuto*, arts. 33 and 34, W. F. Dodd, *Modern Constitutions* (Chicago, 1909), II, pp. 5 ff.

and by the ministers who had access to both houses. The number of bills from ministerial sources, known as *disegni di legge,* increased in the course of time, the executive thus gaining a distinct advantage in the determination of legislative policy. Both chambers employed various methods of voting common to European parliaments; but the *Statuto* required that the vote on the final stage of a bill should be by secret ballot.[1] For detailed scrutiny of legislative and other matters both houses divided themselves by lot into bureaus or *uffici,* nine in the Chamber and seven in the Senate. Members of the *uffici* then selected from their own number *ad hoc* committees to report on legislative projects. In the Senate these committees consisted of one member chosen from each of the seven *uffici,* the procedure requiring that at least four of the *uffici* favor a bill before a committee could be named. As in France this system was gradually supplemented by a standing committee system; and in 1920 the lower chamber did away with the *uffici* altogether, establishing instead 10 permanent commissions chosen directly by the members of the chamber and reflecting the chamber's political complexion.[2] In the Senate the *uffici,* chosen by lot, continued until 1939 when Fascist reorganization did away with them.[3]

Relative Powers of the Two Chambers. It was originally intended that the Chamber and the Senate should be essentially equal in power.[4] The only derogation from the principle of equality was the provision of Article 10 of the *Statuto,* not uncommon in nineteenth-century constitutions, that taxation or budgetary proposals should be initiated in the first or more popular house. But since the *Statuto* set no limit to the number of Senators whom the Government might appoint, the Senate, like the House of Lords in England, became subject to the threat of ministerial packing whenever it failed to be complaisant in the face of ministerial legislative demands. Cavour used such a threat with effect against the Senate as early as 1855.[5] This subordination to the Government of the day, combined with the fact that the Senate lacked popular authority and was at best somewhat artificially constituted, caused its power and prestige to dwindle even before the united kingdom came into being. Al-

[1] Art. 63.

[2] For a good description of the procedure of the Italian Parliament see H. R. Spencer, *The Government and Politics of Italy* (Yonkers, 1932), pp. 156-157 and 181 ff.

[3] See p. 644.

[4] *Statuto,* art. 55, Dodd, *op. cit.,* II, pp. 5 ff.

[5] King, *op. cit.,* II, p. 20.

though its assent continued to be necessary to all legislation, it consistently gave way to the ministry or to the latter's majority in the Deputies on all major issues. By 1870, therefore, the Senate of Italy had already become a kind of honorary political academy, membership in which was regarded as a reward for faithful service to monarchy and State; and the place thus established for it was not afterward substantially altered.

Ministers and the Parliamentary System. As already indicated the ministers of the Government were appointed by the King in accordance with the political will of Parliament. Usually they were chosen from the membership of the chambers. Collectively the ministers formed a Cabinet or council, presided over by a prime minister, officially designated as President of the Council. Except for the prestige attaching to the latter's office and to his political status in the nation at large and a certain primacy in the determination of official policy which usage accorded him, the prime minister was the equal of the other holders of Cabinet portfolios. The Cabinet, thus constituted, administered the affairs of the country as long as it had the confidence of a majority of the Parliament or, to be more exact, of the Chamber of Deputies. The post-Cavourian Italian government was therefore a "responsible" or "parliamentary" government. Cabinets or Councils of Ministers were constructed, reconstructed, and dissolved, and prime ministers came and went, much as in other parliamentary systems such as the British or, after the establishment of the Third Republic, the French.

Peculiarities of Italian Parliamentarism. The Italian parliamentary system, however, early developed certain marked peculiarities which distinguished it from similar systems elsewhere. The *Statuto* reserved to the King the power of dissolving the Deputies and this prerogative was freely used by the ministers, no Chamber, prior to 1914, having been permitted to continue for its entire five-year legal term. Unlike the result of similar tactics in Great Britain, dissolution and a subsequent election in Italy rarely led directly to the overthrow of a ministry, chiefly because ministerial electoral manipulation invariably insured the return of a favorable parliamentary majority.

Transformism. A second and more important peculiarity of Italian parliamentarism was "transformism" *(trasformismo).* This was the name given to the practice, dominant on the Italian political stage after 1876, of constructing a Cabinet with little reference to the party affiliations of its members. Deputies and

Senators entered into ministerial combinations under the aegis of some astute parliamentary strategist or "broker," sacrificing party loyalties and whatever responsibility they owed to their constituents for the desire to hold a portfolio or to aid their political friends. As a result the most diverse elements, drawing support from every political wing of the chambers, and often subscribing formally at least to utterly opposed political principles and programs, were to be found in intimate collaboration as ministers of His Majesty's Government of the day.

Transformism Criticized. Many harsh words have been uttered against transformism by critics, particularly by foreign critics. Not the least of them is that it completely sterilized Italian political life and made the parliamentary system meaningless. These criticisms are not entirely unjustified. As a result of the practice electoral mandates certainly came to mean less than they ordinarily do; and political principles and party labels lost much of their significance. The parties themselves were encouraged to split into an unending series of minor personal factions. High office, including the prime ministership, did not necessarily go to the politicians who had won the confidence and affection of the nation but to those who were adept at parliamentary strategy. Moreover it must be admitted that transformism helped to lower the standard of political morality since it encouraged Cabinet architects to use patronage and even more questionable favors in order to win adherents.

A Not Unmitigated Evil. On the other hand it must in all fairness be pointed out that if transformism balkanized the Italian party structure, it merely contributed to a tendency already inherent in that structure. As will be noted later [1] it was precisely because of the instability of the parties in Parliament that transformism received its initial impetus. Parliamentary Italy, like parliamentary France, was blessed or cursed with a multiple-party system; and if parliamentarism was to be engrafted upon such a system it had to take some form of coalition regime. Transformism was coalition carried to an extreme. Nor can it be denied that transformism was not without certain positive virtues. If it obscured political differences it also encouraged political unity. To some extent it facilitated the formation of cabinets and thereby reduced the number and duration of those cabinet crises which have so often plagued parliamentary states on the Continent. Transformism also made possible that constancy of political

[1] See p. 589.

leadership which was so signal a feature of the Italian Government down to the World War. If the lengthy tenure as prime minister of such men as Depretis, Crispi, and Giolitti gave them the appearance and occasionally the substance of dictatorial power, it also insured a continuity to the outline and substance of Italian domestic and foreign policy greater than is ordinarily secured in a parliamentary State. If transformism was an evil it was by no means the unmitigated evil which non-Italian historians are wont to assert it was.

Local Government. Local governmental institutions were largely created *de novo* during the period of national unification, although the influence of the models which Napoleon I had introduced during his occupation of the Italian peninsula is clearly discernible. Chief areas of local government were some 75 provinces and 8000 communes, both of which were autonomous legal corporations enjoying considerable discretionary authority over such matters as elementary education, local police protection, public health, and local public works. In addition to these two areas mention might also be made of the *circondari,* corresponding rather closely to the French *arrondissements.* The *circondari* served as electoral and judicial districts for the national Government.

Prefect and the Provincial Administration. The chief provincial officer under the constitutional monarchy was the prefect, an official whose creation was directly inspired by his French compeer. Appointed by the Minister of the Interior and directly accountable to that national official, the prefect performed the dual role of supervising autonomous local government both in province and commune on behalf of the national authorities and of serving as the chief local law enforcement official for the Crown. The prefect was also notorious for his political activities on behalf of the national Government, his office being the agency through which ministers and deputies attempted to control the voting in national elections. Assisting the prefect in his duties was a Prefectoral Council of the prefect's own appointees and a Provincial Administrative Junta *(Giunta).* The latter, composed of members of the Prefectoral Council and of representatives of the autonomous governing authorities of the province, exercised important supervisory powers of a financial character over local governmental agencies including those of the commune. In addition it served as the administrative court of first instance, appeals on questions of administrative law going from it to the Council of State at

Rome.[1] In each province there was also a general council chosen by the local electorate which after 1914 embraced practically all adult males. Through a permanent committee of its own members and a president whom it elected, the Council discharged the actual powers delegated to the province as an autonomous governmental entity.

Communal Government. Affairs of the commune were in the hands of a communal council, one-half of whose members were chosen by the local "administrative" electorate every triennium for a term of six years. The communal electorate was governed by the same qualifications as controlled the electorate of the province; it was therefore quite democratic in character. Like the provincial council, the communal council chose a permanent committee of its members to act in its behalf in the rather long intervals between its regular sessions. The commune's chief executive official was the syndic *(sindaco)*. Originally appointed by the Minister of the Interior, the syndic was, after 1896, elected by the communal council and subjected to its control. The syndic, however, continued to exercise certain functions assigned to him by the national authorities and thus served in the dual capacity of a national and communal administrative official. His term of office was for four years; but he was subject to suspension during that interval on motion of the prefect or of one third of the council and he could be removed by the Minister of the Interior.[2]

Political Consolidation and the Rule of the Right (1861-1875)

The Successors of Cavour. As fate would have it Italy's great leader, Cavour, died in 1861 before the final stages of unification had been realized, and before the problem of the political organization of the united State had barely been touched. Leadership had therefore to be intrusted to Cavour's former colleagues and lieutenants in the nationalist movement. These, with the possible exception of Baron Bettino Ricasoli of Florence and the able financier, Quintana Sella, were men of a mold inferior to the great Piedmontese. Moreover their efforts to pilot the new State towards political equilibrium were beset by the foreign complications involved in winning Venetia from Austria and in wresting Rome from the Church.

[1] For a description of both the administrative and regular judicial systems of the Italian State see pp. 644-648 ff.

[2] For further details on Italian local government see extensive description of it as revised by Fascism on pp. 648-655 ff.

Progress towards Uniform Institutions. Considerable advances were nevertheless made in the decade after Cavour's death in introducing national administrative, legal, and economic institutions. The public debt of the previous political entities was consolidated in 1865; and some measure of uniformity was secured in the various tax systems which had theretofore existed in the peninsula. Legal codes were formulated in 1865 and the education laws of Piedmont were extended to most of the kingdom. Local governmental legislation of a definitive character was also adopted in that year. The various armed forces, those which had belonged to the formerly independent governments as well as irregular volunteer forces such as Garibaldi had organized to conquer Sicily, were absorbed into a common military establishment. Internal customs lines were obliterated except for the municipal octroi duties; and a common tariff schedule, derived from Piedmont, was applied to all the frontiers of the new realm.[1]

Law of Guarantees. Perhaps the major issue of a quasi-domestic character facing Italian statesmen at the end of this period of constitutional consolidation was the so-called "Roman Question," the question as to what to do with the papacy now that its lands had been absorbed into the Italian State and its temporal power destroyed. As previously indicated the Church's head after 1870 had declared himself a prisoner of the "usurper" and had urged Catholic communicants to abstain from actual participation in the affairs of the new State. Balked alike by papal hostility and by the indifference of the powers of Europe in its efforts to secure a solution of this question by an international conference, Italy's Government finally sought a unilateral solution, and enacted the famous Law of Guarantees of March 21, 1871. In this statute Italy declared the person of the Catholic pontiff sacred and inviolable and applied the same measure of legal protection to him as she applied to the King. She recognized further that the Pope possessed the attributes and prerogatives of a temporal sovereign, granting extra-territoriality and tax exemption to the Vatican and Lateran palaces and to other ecclesiastical property and guaranteeing that all emissaries to and from the Vatican should enjoy full diplomatic immunity. Catholic theological institutions within Rome were also promised immunity from any interference by State authorities. To reimburse the Church for the loss of revenue from her former possessions,

[1] For these developments see B. Croce, *History of Italy, 1871-1915,* trans. by C. M. Ady (Oxford, 1929), pp. 30-31; and King, *op. cit.,* II, p. 301.

Italy promised to pay into the papal exchequer an annuity of approximately $600,000. Finally Italy renounced in the statute virtually all public control over relations between the Church and Italian citizens which usage and law had formerly sanctioned, attempting thereby to realize Cavour's ideal of "a free Church in a free State." The statute, however, did not conciliate the papacy. Two months after its enactment, the reigning pontiff, Pius IX, rejected it and called for the restoration of temporal sovereignty. Subsequently papal interdiction of electoral and other forms of participation by Catholics in the Government of Italy was reaffirmed. As we shall see, not until the first decade of the twentieth century did the Church recede in any particular from this uncompromising position; and the "Roman Question" with all of its ramifications continued to plague Italian statesmen for more than half a century.

Politics Within the Right. The dominant political group in the Chamber of Deputies at the time of Cavour's death consisted of the combined factions of the Right. This coalition comprised deputies from all over Italy but chiefly from Piedmont, Lombardy, and the northern areas. It was intensely national and, for the greater part, liberal in its political views. The premiers coming immediately after Cavour also relied on the Right; under them, however, this coalition began gradually to disintegrate. Regional groups asserted their independence on various major or minor issues or demanded special concessions for their continued support; sometimes they seceded altogether. Bad blood arose between the Piedmontese faction, the backbone of Cavour's old majority, and leading politicians of the extreme Right from other parts of Italy, who were referred to at the time as the *Consorteria.* When, in 1865, the decision was taken by a Cabinet dominated by the *Consorteria,* to remove the national capital from Turin to Florence, the Piedmontese faction vowed a policy of implacable opposition to any government dominated by the *Consorteria.*[1]

Decay of the Right. While being thus weakened by internal bickerings and dissensions the Right also became increasingly unpopular with the nation at large. Its conservatism on social issues and on such political questions as electoral reform alienated the more progressive elements; its preoccupation with northern industry and agriculture seemed prejudicial to southern

[1] A good account of these developments may be secured in King, *op. cit.,* II, pp. 308-309.

agriculture; and its policy of taxation culminating, in 1869, in the imposition of the detested grist tax (a tax on cereals) proved extremely unpopular with the lower classes, imperative though the need for revenue was at the time. In the Chamber popular discontent was stressed with increasing vehemence by Deputies belonging to the Republican and Radical parties and by the factions comprising the moderate Left. After unification had been finally achieved in 1870, the Right thereby fulfilling the historic mission set for it by Cavour, it began to appear that shortly the destiny of the nation would be committed to other and quite different hands.

The Rule of the Left—Depretis and Crispi (1876-1896)

Advent of Depretis. The last Cabinet of the Right was formed by Marco Minghetti, the Romagnuol, in 1873 and it came to an end in the spring of 1876. The new premier, Agostino Depretis, was a leader of the political Left and a southerner. He was a former Mazzinian and Republican, as were many of his colleagues, such as Baron Nicotera, Zanardelli, Cairoli and Crispi. Few of these men had theretofore held responsible political or administrative posts in the Government. At the time of their accession the nation regarded the event as a virtual revolution; and Conservatives spoke fearfully of the danger of the Left to the established institutions and even to the status of the monarchy. Some of the King's counselors of the Right attempted to dissuade him from granting the seals to Depretis, advice which the King, mindful of his constitutional position under a parliamentary regime, refused to accept.

Policies of Depretis. Except for two fairly brief intervals Depretis remained premier and the nation's political leader until 1887. Although his achievements fell short of the expectations of even his more moderate supporters of the Left and although his regime was characterized towards its close by vacillation and "stand-pattism," Depretis' decade of power were years of some progress in the nation's political life. A greater degree of political democracy was introduced by the franchise bill enacted in 1882. The bill halved the tax-paying qualification, introduced a moderate educational requirement, and reduced the minimum voting age from 25 to 21. As a result the total voting population rose from somewhat over half a million to more than two millions. The tax on cereals was abolished; and beginnings were made in social legislation. A bill to regulate child labor was

passed in 1886, and a measure making formal education compulsory for children between the ages of eight and nine was enacted in 1877.

Break-up of Parties and Advent of Transformism. The Depretian period was especially notable for the permanent impression it left upon Italian parliamentary life. The majority which the elections of 1876 had given Depretis soon showed signs of crumbling. Considerable differences manifested themselves among the leaders of the Left on such questions as the suffrage and taxation. On these issues the alleged conservatism of Depretis was attacked by the extreme Left led by Cairoli and by the Republican group led at the time by Bertani. Eventually these two and their followers withdrew their support from the Cabinet. The growing disloyalty and unreliability of his own section of the Chamber caused Depretis to seek alliances with the more moderate factions of the political Right. His efforts proved successful and by 1882 Depretis was ruling over a Cabinet with the united support of the moderate elements of his own Left combined with a large faction which had split off from the Right. Thus was born that system of parliamentary government by coalitions consisting of heterogeneous and often conflicting party groups and factions which we have already denominated as transformism.[1]

Progress under Crispi. Depretis' successor in 1887 was Francesco Crispi. Like Depretis, Crispi was a former Republican who had made his peace with the monarchy. Like Depretis, also, in whose Government he had served as a minister, Crispi was nominally a member of the political Left, albeit of a more radical faction than his predecessor. Except for the interlude of the premiership of the Marquis di Rudinì in 1891 and of the first Giolitti Cabinet in 1892, Crispi's power lasted until 1896. The earlier period of his rule was notable for the energetic character of his foreign and colonial policy. The bonds of the Triple Alliance with Germany and Austria, concluded some years before, were drawn more tightly and the penetration of Ethiopia, which incidentally was to end in disaster, was begun in earnest. Crispi's "energy" evoked from the European chancelleries more respect for Italy as a power than had theretofore been the case. Important advances were also made in internal affairs. An independent system of administrative courts was set up and a new penal code adopted; local government was made more democratic, first in

[1] See p. 582.

the larger and then in all the communes by entrusting the election of the syndic to the communal councils; and the local franchise was broadened.

Bank Scandals. It was during the interval between the end of Crispi's first premiership in 1891 and his re-elevation to that office in 1893 that the Italian people became aware of the unsavory *Banca Romana* scandal. Tanlongo, a director of the *Banca Romana,* was alleged to have circulated more than fifty million lire of duplicate bank notes. A parliamentary committee indicated in 1893 that Tanlongo had for a long time been making unsecured loans to ministers and deputies without expectation of repayment; that he had contributed money to the press to influence and corrupt elections; and that the ministry of the day, over which Giovanni Giolitti was presiding, although aware of these conditions, had not brought them to the attention of the prosecuting authorities or of Parliament. It was a form of corruption of which little had been heard in Italy for over a generation; and the evidence of its existence, like the contemporaneous Panama Canal scandal in France,[1] intensified an already pronounced attitude of popular cynicism towards politicians and parliamentary institutions.

Social Unrest. The second half of Crispi's rule was marked by the beginning of an epidemic of social unrest and labor disturbances which was subsequently to form one of the most formidable problems Italian cabinets were called upon to solve. The first serious disturbances occurred in Sicily in 1893 where the peasants and the agricultural laborers on the great estates, their accustomed poverty aggravated by a severe depression, formed unions and other associations which demanded reform in the system of land tenure and co-operative marketing and distribution of products. The movement brought sufficiently strong pressure upon the landlords to secure concessions from them; and it was the landlords' demand for governmental protection against the unions, coupled with severe rioting in various parts of the country and conflicts between the peasants and the police, that finally led the central government to intervene. Although a Sicilian himself and a former Republican, Crispi showed no leniency in putting down the disorders. Military authorities were dispatched to the island. They proclaimed a state of siege and broke up the associations. Military tribunals replaced the civil; and unusually long sen-

[1] See E. M. Sait, *The Government and Politics of France* (Yonkers, 1918), pp. 285-286.

tences of imprisonment were meted out to the leaders of the peasants.

Crispi's War on Socialists. Among the condemned were several Socialists. Socialism had come to Italy in the 'eighties under the leadership of Andrea Costa who was elected deputy from Imola in the Romagna as early as 1882. In 1891 the first Socialist congress was held at Genoa and a Socialist review, the *Critica Sociale,* was founded at Milan under the editorship of Filippo Turati, destined to become a leader of the Socialist cause for more than a quarter of a century. Allegedly connected as a party with the Sicilian disorders, the Socialists also became an object of Crispi's repressive policy. From a subservient Parliament he secured legislation paralleling Bismarck's laws against the German Social Democrats; and thus armed his prefects proceeded to disband the popular and Socialist associations in all the principal cities of the North. Legislation was also secured in July, 1894, to revise the electoral registers; and Socialists as well as other enemies of the Crispi regime suffered in the subsequent purge of almost a fourth of the total electorate.

An Interval of Reaction (1897-1900)

Fall of Crispi. Crispi fell from power and into complete eclipse in 1896, owing to the public outcry raised over his Cabinet's alleged responsibility for the terrible defeat inflicted upon an Italian army in that year by the Negus Menelik of Ethiopia at Adowa. The reactionary policy against the labor unions and the Socialists had by no means proved successful. Liberal sentiment throughout the nation rallied to the defense of many who were deemed to have been unjustly or harshly treated by the Government. Radicals, Socialists, and even the moderate Left combined in Parliament and, under the leadership of the Radical, Cavalotti, boldly defied the majority. Socialist deputies whose mandates had been cancelled by the Government majority were triumphantly re-elected in their constituencies despite governmental opposition; and in the general elections of 1895, despite the purging of the electoral rolls and the usual pressure of the prefects in favor of Crispi candidates, the Socialist delegation in the Deputies rose from 8 to 12.

More Social Unrest. Failure of the Crispi policy, however, taught nothing to Crispi's successors. To be sure the Marquis di Rudinì, who became President of the Council on the morrow of Crispi's retirement, strove at first for conciliation. Crispi's anti-

Socialist laws were rescinded and amnesty was extended to the Sicilian political prisoners. The Rudinì Government also took important steps in the direction of social-welfare legislation, providing in 1898 for the compulsory insurance of workers against accident suffered during the course of employment, and for bettering existing provisions of old-age pensions and sick benefits. But when Socialist and labor disturbances broke out once more in Italy in the spring of 1898, culminating in a virtual insurrection in Milan on May 6, 1898, the Crispian tactics were once again employed. A state of siege was proclaimed in Milan and other northern industrial centers. The military was called out and in Milan their indiscriminate shooting and repression of the civilian population left casualties of more than 80 dead and hundreds wounded. Military tribunals again sentenced leaders of Socialist and other Leftist groups to long terms of imprisonment; radical newspapers were suspended; and Socialist, Radical, and Catholic clubs and co-operative societies were summarily dissolved.

Pelloux and Reaction. Subsequently, in June, 1898, a Cabinet under General Pelloux, made up chiefly of reactionaries and dominated by the military, came into power. After a few conciliatory gestures, Pelloux, with the apparent approval of King Humbert, inaugurated a period of political reaction more severe than any the nation experienced between the days of its founding and the Fascist conquest of power in 1922. The advent of the reaction was heralded by a series of measures which General Pelloux introduced into Parliament in June, 1899. Among other things these provided that the right of public meeting should in the future be subject entirely to the discretion of the police or provincial authorities and that a virtually military discipline be imposed upon the civil service. They also gravely threatened the existing freedom of the press and proposed to introduce penal settlements for political offenders.

Parliamentary Opposition. The entire parliamentary Left at once coalesced and bitterly fought the proposals, so obviously a violation of the *Statuto*. To delay Parliament's consideration and final action the Leftist leaders resorted to a policy of obstructing deliberation, using all the devices known to the astute parliamentary tactician. Premier Pelloux's answer to these tactics was the prorogation of the Deputies and the declaration that the proposed measures should become law by decree of the executive power. Upon its reassembly four days after the prorogation, Par-

liament granted the ministers a bill of indemnity to cover any illegality which might result from their resort to the decree power.

Annulment of the Pelloux Decrees. Decree powers of Continental executives have always been of greater scope than similar powers in the case of British or American executives.[1] In Italy, since the invocation of the power by Crispi in the Sicilian revolt, it had been greatly extended and precedents existed for its application to the legal rights of citizens. Nevertheless, on February 22, 1900, the Court of Cassation at Rome annulled the Pelloux decrees. Nothing daunted, the prime minister and his Cabinet renewed their effort to have them incorporated into law. To check obstructionist tactics in the Chamber, the Cabinet proposed new standing orders to take effect immediately and without debate. Most of the opposition thereupon walked out of the Chamber, a form of protest sanctioned by ancient usage and destined to have a fateful parallel a quarter of a century later upon the inauguration of the Fascist reaction.[2] Upon the opposition's withdrawal, the remaining deputies adopted the new standing orders and the Chamber was again prorogued.

Pelloux Resigns. But the new orders proved of little merit against ever more ingenious obstructionist tactics devised by the opposition when Parliament reconvened in May. As a last resort, Pelloux decided to dissolve the Chamber and appeal to the country, confident that the Cabinet, by exerting the usual electoral pressure, could secure a vindication of its policy. The results, however, were disappointing; although a Government majority was returned, it was a reduced majority. It was, moreover, plain, in view of the popular acclaim with which deputies of the Left had been greeted at the polls and elsewhere, that the Pelloux measures were unpopular and that the country wanted none of them. Pelloux accordingly resigned and a ministry of conciliation, headed by the president of the Senate, Giuseppe Saracco, was appointed. A tragic sequel to the whole affair occurred at Milan on July 29, 1900, when the anarchist Bresci shot and killed King Humbert.

The Giolittian Period (1901-1914)

Subsequent Dominance of Giolitti. The reaction was now promptly liquidated and as soon as the Saracco ministry expired,

[1] Art. 6 of the *Statuto* merely states that the discretionary decree power for the enforcement of law shall not suspend the law's execution nor grant anyone exemption from the law's operation; otherwise the power is left quite elastic.

[2] See p. 620.

the new King, Victor Emmanuel III, proceeded to intrust power to the Left once more. There it remained until the days of the World War and beyond. The seals were first given to Zanardelli, the veteran Radical, and upon his death to Giovanni Giolitti who, having retrieved his political reputation since the days of the *Banca Romana* scandal, had taken office under Zanardelli as Minister of the Interior. This premiership of Giolitti, his second, lasted from 1903 to 1905; his third premiership came in 1906 and lasted until 1909; his fourth dated from 1911 and lasted until 1914.[1] The intervals between these premierships were filled by Signori Fortis, Sonnino, and Luzzatti, each of whom was more or less a temporary substitute for Giolitti, whose leadership was in the ascendant throughout the entire period. This period may therefore quite properly be called the "Giolittian period"; it was dominated by him just as the period between 1876 and 1887 was dominated by Depretis and that between 1888 and 1896, by Crispi.

Civil Progress. The Giolittian period was one of considerable advance in almost all lines of national endeavor. The Italian philosopher and historian, Benedetto Croce, says it constituted the epoch in which the liberal ideal was most fully realized in Italy.[2] Certainly it was at once made clear that the lesson of the reactionary years of the last decade of the nineteenth century had been completely understood. After 1900 the press was free and the Government respected its freedom as well as the freedom of public meeting and association. Proof of the existence of these rights came with the extraordinary growth of popular and radical journals and the organization of numerous Left-wing and extremist political groups.

Labor and the Government. Proof was also to be discerned in the considerate attitude which the Government maintained towards labor. Strikes and disturbances were by no means ended; on the contrary warfare between capital and labor became more intense, strikes grew in number and the demands of labor became ever more importunate. Workers on the railways threatened to tie up transportation by a general strike in 1902; in 1903 there was a general strike in the capital; and in September, 1904, a general strike, partly political in origin, tied up the utilities of

[1] Giolitti's fifth and last cabinet was formed in June, 1920; see p. 611.

[2] *Op. cit.*, p. 214. For this period consult also G. Giolitti, *Memoirs of My Life*, trans. by E. Storer (London, 1923).

Italy's chief cities. The Government acted with firmness to preserve order; in the railway strike it called the strikers to the colors and charged them with desertion when they failed to appear; in the general strike of 1904, it used troops. But there was none of that indiscriminate repression which had culminated in 1898 in the notorious May massacre in Milan; on the contrary serious efforts at conciliation were made, the Government acting as mediator between strikers and employers, and even contributing public funds on one occasion to meet certain of the strikers' demands.

Welfare Legislation. The new official attitude towards labor was also emphasized by the advance of social legislation of all kinds. Previous acts dealing with child labor, compulsory industrial insurance, health insurance, and old age pensions were extended and strengthened. Night work was forbidden to women and to children under 13, and a weekly rest day was guaranteed all workmen. Provision was made for the municipalization of certain utilities and loans were offered communes to aid in public health and sanitation programs. Various forms of insurance were made a state monopoly by the third Giolitti Cabinet; and in 1910 the national government assumed a larger share of the financial responsibility for local elementary education.

Financial Stabilization. Despite the mounting expenditures occasioned by these and other projects, increase in the nation's wealth and more efficient fiscal administration brought the finances of the State into a sounder condition than they had been at any time in its history. The fiscal problem, as frequently reiterated in these pages, had been Italy's bugbear from the very beginning. Heroic and intensely unpopular measures, including the cereals tax, popularly known as the "tax on hunger," had been necessary to secure a balanced budget in the 'seventies. Deficits re-occurred between 1885 and 1897; thereafter, however, surpluses once again became the order of the day. A series of able finance ministers, of whom the most noteworthy was probably Luigi Luzzatti, subsequently prime minister, so improved Italy's credit position that in 1906 an advantageous conversion of approximately three-fifths of her total indebtedness was carried into effect. The conversion involved reduction of the interest rate on Italian consols from 4 to 3¾ and eventually to 3½ per cent, the reduction netting an annual saving of many millions of lire to the treasury. Responsibility for the success of the con-

version was chiefly Luzzatti's; and the resulting favorable credit position and balanced financial state were maintained until the period of the World War.

Franchise Reform. Further evidence of political maturity was afforded in 1912 when the second and last franchise reform of the pre-War period was adopted. The reform extended the ballot to Italian males who had reached the age of 30 even though they could not satisfy the existing educational requirement. The privilege was extended to those who, though younger, could satisfy the existing educational requirements, and to those who had completed their military service. The liberal character of the reform bill resulted largely from the insistence of Giolitti who, returning as prime minister for the fourth time in the spring of 1911, had scrapped the reform measure of the preceding cabinet of Luzzatti which had been considerably more conservative. The reform raised the eligible electorate from something under three millions to something over eight, and placed Italy in the van of the Continental states possessing democratic political institutions.

War with Turkey. Mention must also be made of the first important military contest in which Italy engaged after her unification. This was the war against Turkey begun in 1911, from which Italy emerged victorious in the following year. The war was a deliberately willed colonial adventure out of which Italy received the areas then remaining under Turkish sovereignty in North Africa, viz., Tripolitania and Cyrenaica. These areas were later combined to form Italian Libya. Their conquest contributed somewhat to allay earlier colonial disappointments and particularly the loss of Tunisia to France in 1881. During the Turkish War Italy also seized and afterwards held Rhodes and other islands comprising the Dodecanese group in the Aegean. Her formal title to these islands was finally confirmed in 1923.

Political Conditions on the Eve of the World War

The Extreme Left and the Socialists. During Giolitti's ascendancy a marked evolution had occurred among the organized political forces of the nation. The Republican Party, a group of some influence since the days of Mazzini, had virtually disappeared and its closest ally, the Radical Party, had been considerably weakened. Supplanting these groups on the extreme Left were the Socialists, whose origins in Italy have already been remarked upon. Socialism had greatly increased its parliamentary

strength, having seated some 72 deputies in the Chamber in the elections which followed the extension of the franchise in 1912. Socialism was also able to count upon organized labor for support, having intimate ties with the various Chambers of Labor and other labor organizations. The party had frequently supported the Government of the day, particularly in the enactment of social legislation; and in its national congresses a strong moderate wing had more than once manifested a disposition to develop a thoroughly gradualist philosophy. Two leaders of this wing, Turati and Bissolati, had on separate occasions in 1904 and 1911 been asked by Giolitti to enter his Cabinet. Italian Socialism, however, was even more seriously afflicted with doctrinal and tactical controversies than the world body of Socialism; and in 1912 the more radical or "orthodox" elements, aided by Socialists of a Sorelian syndicalist persuasion, seized control of the party, expelled such gradualists as Bissolati, Bonomi, and their followers, and charted for the party a policy of militant non-cooperation with middle-class governments. The expelled Socialists thereupon organized an independent reformist Socialist group. One of the leaders of this swing to the Left was Benito Mussolini, later to become the leader of Fascism and the most bitter opponent of Socialism and all its works.[1]

The Left and Political Catholicism. Chief support for the cabinets prior to the World War continued to come from the so-called "Left." In reality this had become a sort of "Right-Center" composed of numerous personal factions to which the title of "party" could be extended only by courtesy. In this area of the political firmament there had gradually come to exist a sizable group of Catholic deputies. This group had grown up because of the easing of restrictions which official Catholicism had formerly imposed upon political participation, a policy brought about partly by the more conciliatory attitude of Pope Pius X who had succeeded Leo XIII in 1903, and partly because of the Church's fear of Socialism. The organization of a really formidable Catholic political party was not, however, attempted at this time. That effort, as we shall see, was delayed until after the World War.

The Right. The old Right of pre-Depretian days had largely passed from the parliamentary scene. Attenuated in number by

[1] For an account of Socialism up to 1911 see R. Michels, *Storia critica del movimento socialista italiano* (Florence, 1926). For later developments see I. Bonomi, *From Socialism to Fascism*, trans. by J. Murray (London, 1924).

the leftward orientation of political life and suffering from the transformist tactics of Leftist cabinets, it had virtually succumbed as an organized political force. On the extreme Right, however, a new group of so-called "Nationalists" had arisen. Accepting Mazzini's myth of the nation, they rejected utterly his international tolerance and democratic republicanism; they also had the profoundest contempt for what they described as the political laxness and ineptitude of the liberal politicians of the day. Hierarchy and authority and the subordination of all classes, particularly of labor, to the national will was their ideal of internal polity; and a vigorous policy, involving imperialist competition and war, characterized their views on international affairs. They greatly idealized the former prime minister, Francesco Crispi, discovering in the "energy" which he had displayed both in his domestic and foreign policies their own best traditions.[1] Nationalists began to appear in the Italian Parliament after 1910. Although their group remained numerically insignificant it was destined to be important, since from it was to come, after 1922, many of the leaders and much of the ideology of Fascism.

Weaknesses of the Liberal Regime. By 1914 national Italy's political regime had thus acquired some semblance of maturity and constitutional equilibrium. Nevertheless the regime suffered from certain fundamental weaknesses. In the first place, although the political system had a liberal orientation, liberalism as a political faith was largely unknown to the literature of the day. That faith had been popularized by Cavour and the leaders of the *risorgimento*. In the years since their passing little effort had been put forth to describe its evolution as political doctrine. To many the liberalism of Giolitti's day still meant primarily the liberalism of Cavour's day. Forgetting that political and civil liberty had grown up side by side with a considerable amount of public intervention in economic and cultural affairs, there were those in the Italy of 1914 who still spoke of the liberal State as the regime of *laissez faire* envisioned by the classical economists, and as a system of government indifferent to morality, religion, and social welfare.

Distrust of Politicians. The parliamentary politicians had also acquired a certain reputation for moral insensibility and cold-blooded political practicality which, it must be confessed,

[1] E. Corradini, *Il Nazionalismo italiano* (Milan, 1914), especially pp. 5-23 and 126 ff.

was by no means unmerited. The compromises which transformism encouraged in the construction of cabinets, the wire-pulling, log-rolling, patronage dispensation, and cloakroom politics which accompanied such activity, and the contempt and downright dishonesty which so often characterized the attitude of minister, deputy, and prefect towards elections, all lent credence to the hypothesis that liberalism meant moral decay in political life. These practices tarnished liberalism's shield for others than moral absolutists; they encouraged cynicism and political indifference among the masses, and supported the belief, by no means limited to Italy, that government, and particularly parliamentary government, was a game in which the politicians always won.

Liberalism's Dearth of Youth. These conditions helped to drive the youth of the nation out of the ranks of liberalism into the camps of those who professed other faiths. Most of them embraced Socialism; many of them were attracted to the brilliant and more glaring light of twentieth-century Nationalism. Far too few of the intelligent and the ambitious remained to lend their talents to the existing regime. Even when they did remain, too little use was made of them owing to the tendency of the older politicians to monopolize the posts of power. The historian Croce says that Giolitti realized liberalism's dearth of young men and quite early in his career as Italy's leading politician he tried deliberately to recruit a group of them under his patronage and train them for future responsibilities. Croce adds that fortune did not smile on Giolitti's efforts, death overtaking some of the recruits in their prime and apostasy overtaking others.[1] If these and other weaknesses of the liberal parliamentary regime did not manifest themselves too clearly before 1914, they were to become all too clear in the stress and strain of the World War and post-War periods. In 1919 Don Luigi Sturzo, leader of the Catholic Populist Party, was to sum them up in his oft-quoted phrase, the "crisis of the political class." [2]

[1] *Op. cit.*, p. 216.
[2] See his *Italy and Fascismo,* trans. by B. B. Carter (London, 1926), p. 59.

CHAPTER II. DISSOLUTION OF THE PARLIAMENTARY STATE

Political Conditions in Post-War Italy

A Fateful Decade. The ten years from 1915 to 1925 were among the most momentous in Italian history. During that decade the liberal parliamentary regime which Cavour had initiated and which the years of Giolitti's ascendancy had brought to substantial maturity began to disintegrate. Controlled from 1918 to 1922 by ministries which were incapable of preserving order and giving energy to administration, the State became in those years a prey to contending political factions. With its authority at low ebb and its defenses seemingly paralyzed, it fell a victim in October, 1922, to one of the most ingenious *coups d'état* in modern history, the Fascist March on Rome. Although many of the institutions and processes of the parliamentary regime survived even that event for another two years, they rapidly lost whatever vitality and significance they still possessed. Eventually, in 1925, the remnants of that system were liquidated and in its place was established one of the most formidable of contemporary dictatorships, styling itself the "Fascist regime."

Causes of the Destruction of Parliamentary Government. Although an understanding of the underlying causes of this debâcle of Italian parliamentarism is of profound importance to students of contemporary politics, those causes are as yet by no means clear. The testimony of the participants in the events transpiring between 1915 and 1925 conflicts; it is, moreover, understandably obscured by the participants' personal views and interpretations, and colored by their sympathies and antipathies. Some of the causes are probably to be discovered in the perennial weaknesses of the Italian parliamentary system commented upon in the last chapter. There appears to be general agreement, however, that the leading causes are directly traceable to the World War and to the effects of Italy's participation in that titanic struggle.

The Cost of the War. Italy emerged victorious from the World War but at a great cost. The camps and battlefields had claimed the lives of more than 600,000 of her sons; a million more had been wounded in action and many of these permanently incapacitated. Her Venetian provinces had been invaded and her territory had provided one of the War's great battlegrounds. Production for normal peace-time needs, both in industry and agriculture, had fallen off, owing to the mobilization of man power and productive enterprise for military purposes. Budgetary deficits of the War years, covered by foreign and domestic loans, had raised the public debt to astronomical proportions. The unsatisfactory state of the national finances and the reduction of the metallic coverage for her currency had greatly lowered the value of the lira. Prices had skyrocketed and the cost of living had soared to levels unheard of before 1915. In addition to all this the conclusion of hostilities had left the nation with the problem of re-absorbing some two million conscripts into peace-time vocations, of liquidating the war economy, and of redirecting much of production into normal peace-time channels. These phenomena were, of course, common in greater or less degree to all the belligerents, victor and vanquished alike; they represented the cost to Europe and the world of four years of frenzy. But for Italy, traditionally a poor country in comparison with her richer and more powerful allies, the cost of the War meant literally national prostration.

The War Divides the Nation. Besides these liabilities, which can be reduced to statistics, the War had produced others which, if less tangible, were none the less real. The first of these was the division in national sentiment which had been produced by Italy's participation in the War. The conflict from its inception had not been popular with large sections of the nation's political elements. Intervention had been championed chiefly by forces unrepresented in Parliament, by the Nationalists, military leaders, journalists, certain renegade Socialists, and ardent spirits like the poet D'Annunzio. Parliamentary opinion had been largely opposed to participation. The veteran political leader Giolitti, who had been superseded as premier by Antonio Salandra in May, 1914, had counseled indefinite neutrality, fearful of the exhaustion which might follow what he considered would be a long conflict, and confident that the diplomacy of neutrality would pay better national dividends than belligerency. Even as late as the first week of May, 1915, after the Salandra Cabinet,

without informing Parliament, had already agreed to begin hostilities on the side of the Entente by May 26th,[1] more than 300 deputies and senators had left their cards at Giolitti's home as an indication of their support of his peace views.[2] Neutral views were even more strongly championed by the bulk of the Socialist politicians and leaders of organized labor.

This unfortunate schism over the War persisted throughout the conflict and was partly responsible for the lack of morale which helped to bring on the defeat of the Italian army at Caporetto late in 1917. After the War's end it became even more pronounced, Socialists and "neutralists" generally placing the responsibility for the post-War malaise upon the politicians of the war-time cabinets and upon the interventionists. Combined with other factors this criticism developed a distinctly anti-war feeling among the masses which exhibited itself in attacks upon politicians and war profiteers, in insults against the military, in contempt for the uniform and the flag, and in general indifference to the claims of the returned soldiery.

Public Opinion and the Peace Treaties. The peace, moreover, contributed as grave a schism in public opinion as the War had. Italians are fond of repeating to this day that they won the World War by their victory at Vittorio Veneto in October, 1918, and then lost it at the Paris Peace Conference. Whatever the merits of that observation, Italy probably was treated unfairly at the Conference. Her allies, France and Great Britain, did not insist upon executing the territorial pledges which they had made to her in 1915 in the Treaty of London. Rather, they followed the lead of the United States which, not having been a signatory to the treaty, quite properly refused to be bound by it. As a result Italy received only the former Austrian territories of the Trentino and the Istrian peninsula, and was denied Dalmatia, which had also been pledged in the London Treaty. Again, while her allies took over the former German colonies as "mandates," Italy, despite previous assurances of "compensation," received no extra-European territory except that involved in some minor frontier rectifications of her existing colonies.

Fiume. This alleged unfair treatment aroused intense indignation among some sections of the Italian population. Nation-

[1] This agreement had been made in the secret Treaty of London, signed on behalf of Italy by Baron Sidney Sonnino, Salandra's foreign minister, on Apr. 24, 1915.

[2] For these developments see G. Giolitti, *Memoirs of My Life* (London, 1923), pp. 386 ff.

alists, army officers, and erstwhile interventionists were furious and placed a large share of the blame upon the leaders of the Italian Government, particularly upon Signor Orlando, premier at the time of the Peace Conference, and upon his successor, Francesco Nitti. These were charged, not without some justification, with diplomatic incapacity and with the surrender of Italy's interests to other powers. A group of these critics, captained by the poet D'Annunzio, proceeded in Garibaldian fashion to occupy the city of Fiume. This city, although not included in the original Italian territorial demands, was ethnically Italian and was considered as some compensation for the loss of Dalmatia. The occupationary forces held the city for months in defiance of the Italian Government, demonstrating in striking fashion the low estate to which the Italian political authority had fallen in the immediate post-Armistice period.

Social Unrest. The War had also generated in Italy, as in other belligerent states, an intense revolutionary sentiment which demanded far-reaching changes in the economic and political structure of society. This sentiment began to manifest itself in all its vigor as soon as hostilities had ceased. It was fanned to white heat by demobilized soldiers who could not readily find jobs, by industrial workmen who wanted to maintain their war-time economic status in the face of a post-War slump, by agricultural workmen discontented with their status on the great estates, and by extremist agitators intent upon political advantage. On some of the *latifundia,* particularly in Sicily, peasants began to seize the land they cultivated and to hold it against the owner's agents. In the cities, strikes and street disorders rose to serious proportions.

The War's Effect upon Parliament. To all these consequences of the War must be added one more and that is the virtual disappearance of parliamentary authority. Distrusted because of its pacifism, Parliament was seldom convoked during the War years; when convoked it was soon prorogued. The Italian legislature was thus denied virtually every opportunity to discuss the budget and expenditures and to keep informed on the financial and diplomatic engagements assumed by the Cabinet. The strenuous divergence on the War policy among the parties made impossible a general coalition or "sacred union" such as came into being in France, the Cabinet of Premier Boselli, formed in the summer of 1916, having been but an abortive effort in that direction. The policy as well as the admin-

istration of the nation fell largely into the hands of the ministers or their bureaucratic underlings and into the hands of the army officers. These officials ruled by decree. Allegedly most decrees derived their validity from the statute granting full powers to the Cabinet to conduct hostilities, which Parliament had rather reluctantly enacted on May 22, 1915.[1] But the decrees frequently went considerably beyond the bounds contemplated by the statute. Still another source of alleged legality for decrees was the Army Penal Code. Although ordinances (*bandi*) enacted under its authority were nominally restricted to the armed forces, many such ordinances during the War period related to ordinary police measures and the powers of local governmental bodies.[2]

Parliament Fails to Recover Its Power. Nor did the War's cessation witness the restoration to Parliament of the authority which had thus been taken from it. On the contrary, legislation by decree became, as Sturzo says, "the normal and unchallenged procedure," Parliament frequently enacting full-power bills granting decree authority over penal and civil matters.[3] As late as the early summer of 1920 when Giolitti assumed the premiership of his fifth and last ministry, he had made the restoration of the legislative power a cardinal point of his platform;[4] yet before he stepped out of office in 1921 he too had sought a full-powers bill granting the Cabinet the right to reorganize the civil service by decree.[5] The simple fact was that the politicians had become habituated to the practice of legislating by decree and found difficulty in restoring to Parliament the power which it had surrendered during the period of national emergency.

Here, then, were some of the major consequences of Italy's belligerency for her internal polity. They indicate how difficult the problem of post-War readjustment was to be. Drained by the human and economic sacrifices of the War, her people divided into hostile groups by the issues which the War and its aftermath had fostered, and her Parliament deprived of its essential prerogative, Italy in 1919 had only a limited prospect of securing

[1] No. 671, *R. U.* (*Raccolta ufficiale delle leggi e dei decreti*), 1915, III, pp. 2005-2006.

[2] For these developments see Giolitti, *op. cit.*, p. 410; also F. L. Ferrari, *Le Régime fasciste italien* (Paris, 1928), pp. 29-30; I. Bonomi, *From Socialism to Fascism*, trans. by J. Murray (London, 1924), pp. 63 ff.; and L. Sturzo, *Italy and Fascismo*, trans. by B. B. Carter (London, 1926), p. 75.

[3] Sturzo, *op. cit.*, p. 77.

[4] Giolitti, *op. cit.*, p. 415.

[5] *Ibid.*, p. 446.

political stability under her old liberal institutions. Just how limited that prospect was will become clearer as we proceed to trace the political history of the post-War years and describe the major events which led to the Fascist *coup d'état* and finally to the dictatorship.

The Trend to the Left (1919-1920)

Formation of Populist Party. As might be expected in view of some of the conditions just described and the universal trend of the period, political life in post-Armistice Italy took a course far to the Left. In January, 1919, a new party, called the Catholic *Popolari* or Catholic Populist Party, was formed under the leadership of Don Luigi Sturzo, who was both a priest and the syndic of a Sicilian commune. Although independently organized and possessing no direct connection with the Church, the new party was clearly dominated by clerical influences and represented the culmination of the tendency, noticeable after 1904, towards active participation of the Catholic laity under clerical auspices in the politics of the Italian State. For some months after its formation the Populist Party was only indirectly represented in the Italian Chamber, that body, elected in 1913, having continued like the parliaments of other belligerent states beyond its legal term. But in the elections of November, 1919, the first to be conducted under a system of proportional representation and universal suffrage for all adult males, the Populists secured 100 seats. They thus had nearly a fifth of the voting strength of the Chamber and became that body's second largest party. The Populists were pledged to far-reaching political and social reforms. They demanded woman suffrage, political decentralization and regional self-government, guarantees for the integrity of religious schools, extensive social-welfare and labor reforms, legal protection for small landholders, and the establishment of peasant proprietors on the southern *latifundia*.[1] Although this program was decidedly Leftist and reformist in character, the Populists, restrained by the Church's respect for law and order, were necessarily pledged to secure it by orthodox constitutional means.

Revolutionary Tendencies of the Socialists. No such restraint affected Socialism, the other organized force on the Left which now shared with Catholic Populism a preponderant influence on Italian political life. Opposed to the War, Socialist leaders nevertheless regarded its dissolvent effects upon society as providing

[1] Cf. Sturzo, *op. cit.*, p. 91.

them with an excellent opportunity for applying their theories of social and economic transformation. The Socialist Party had been deeply affected by the success of the Bolshevik Revolution in Russia; and although the old right wing led by Turati, Treves, and Modigliani did not think that Bolshevism afforded any precedents for Italian Socialism, the more numerous and therefore preponderant radical wings, led by Lazzari, Gennari, and Graziadei, wished to profit by the Russian example and apply the same direct and violently revolutionary tactics which had availed Lenin in overcoming Kerensky and establishing the Soviet regime.

They Adopt a Campaign of Direct Action. Hence as soon as the Armistice had been concluded and war-time restrictions on political activity had been lifted, Socialism began an earnest campaign to bring the revolution to Italy. Strikes and industrial disorder became chronic, public services were tied up, riots multiplied in the streets, and the military and police were insulted and often assaulted. In the agricultural districts along the Po, Socialist leagues and labor leaders acquired a virtual monopoly of the supply of farm labor, dictating to the landowners and agricultural operators under what terms labor might be hired and under what conditions produce might be harvested and marketed. Destruction of the owner's property was the punishment for anyone who refused to abide by the regulations thus set forth. The ostensible purpose of these tactics to improve the economic position of labor but imperfectly veiled the wider aim of overthrowing the existing capitalist structure of society.

Socialist Electoral Gains. In the national elections of November, 1919, the same in which the Catholic Populists received 100 seats, the Socialists obtained 156, thereby becoming by far the largest single political unit in the Chamber. In collaboration with other groups they might have done much to establish the supremacy of the working classes by law. Dedicated, however, to a policy of direct action, they scorned any form of parliamentary collaboration with "bourgeois" groups, preferring instead to obstruct parliamentary deliberation, and to practice political blackmail upon the various cabinets of the day. In the local elections of the following year they were also immensely successful, no less than 2000 communes, located chiefly in the North, returning Socialist majorities to their councils. Here Socialism used its power to inaugurate or to strengthen municipally socialized or co-operatively organized services, thereby

stimulating the wrath of the private entrepreneur and the taxpayer.

The Factory Seizures. The crisis of Socialism's policy of direct action came with the occupation of the factories by the workmen in September, 1920. On August 30th, following the threat of a strike among some of its more specialized workmen, the owners of the Romeo foundry in Milan ordered a lockout. Fearing that lockouts would spread to other industries, leaders of labor counseled all workmen in Milan to remain at their posts on the following day and not leave the factory premises. Thus began what is probably the first "sit-down" strike in modern industrial history. The example thus set spread to other industrial cities of northern Italy and even to certain industrial centers of the South. Relying upon supplies brought to them by sympathizers on the outside, the workmen barricaded themselves in the various plants which they had seized, organized committees of factory management, and in some cases actually operated the plant under their own auspices. The more radical labor and Socialist leaders looked upon the development as the first stage of the "revolution" which would expropriate capital and inaugurate the Soviet state; and the operators frankly feared for the future.

End of Factory Seizures. Had the leaders of the workmen been more resolute, the situation might easily have precipitated a sanguinary civil conflict. But the revolutionary tide had already turned and more moderate elements were in command. In a plebiscite conducted on September 11th to determine whether the strikers should negotiate with the employers or hold out indefinitely, a sizable majority voted for negotiation. Several days later the Government promised to require by law the establishment of workmen's councils in the factories, with the right of representing labor before the management. This, coupled with a slight wage concession, broke the back of the "sit-down" strike; and by the end of September all the occupied factories had been evacuated.[1]

Decline of Socialist Revolutionary Threat. The end of the factory occupations also marked the end of the Socialist revolutionary threat. To be sure the party was still a power in Parliament and in the communes; and in Parliament it persisted in its policy of non-collaboration. But its revolutionary fervor was

[1] For a good account of this episode see E. A. Mowrer, *Immortal Italy* (New York, 1922), pp. 306 ff.

gone, partly because its leaders had not dared to take the final step when the opportunity had presented itself in September, partly because reports filtering back from the party's own emissaries to Russia painted a gloomy picture of the Soviet paradise. Socialism's erstwhile unity as a political organization was now also destroyed. In January, 1921, on orders from the leaders of the Third or Moscow International who were disgusted with the tactics of the Italian Right-wing Socialists in the factory occupations, the extreme Left wing of the party, lead by Graziadei, seceded to form a separate Italian Communist Party. A middle group, calling themselves Maximalists, led by Lazzari, and the Right wing of Reformists, led by Turati and Modigliani, continued an uneasy partnership for a little longer. Eventually on October 13, 1922, these too parted company, the Maximalists taking the name of the Italian Socialist Party while the Reformists became the Unitary Socialist Party.

Counter Revolution and the Emergence of Fascism (1920-1921)

Reaction of the Propertied Classes. But although historians may now conclude that the Socialist revolutionary threat was definitely ended after September, 1920, such knowledge was not vouchsafed to contemporaries. To the Italian middle class—to the industrial magnate, the landed proprietor, and even the small shopkeeper—the factory occupations, far from seeming like the zenith of Socialist revolutionary activity and the beginning of its decline, appeared to be a certain harbinger of a Bolshevist *coup*. An attitude of resistance to Socialism, which had been gradually hardening in the months after the War, now ripened into resolution. It was an attitude of resistance quite as contemptuous of law and duly constituted authority as the Socialists themselves had displayed. All that was needed to give it effect was an organized movement and a leader. These were quickly forthcoming. The organization was Fascism; the leader, Benito Mussolini.

Mussolini: Career as a Socialist. This man, destined within a few years to become the dictator of Italy and to hold that position up to the present, is one of the most colorful and challenging political personalities of the age. By his enemies, who are many, he is regarded as an unprincipled demagogue; by his supporters,

who are legion, he is declared to be the greatest statesman of the age. Up to the time he acquired national prominence, he had had a most versatile, if not chameleon-like, political career. Born in the Romagna of lower middle-class parents, he had at quite an early age chosen Socialism as his politics and journalism as his vocation. His Socialism was of the more intemperate brand, stemming from the revolutionary syndicalism of Sorel; and he had nothing but contempt for the easy-going moderates of the party. In 1912 he had been one of the leaders in ousting such moderates as Bissolati and Bonomi from the party and was rewarded for his intransigence by being made editor of *L'Avanti,* the leading Socialist journal. The outbreak of the World War, however, found Mussolini preaching Italian intervention on the side of the Entente, in direct violation of the party's official stand of neutrality. He was accordingly ousted from both the party and *L'Avanti.* He served at the front as a non-commissioned officer of the *Bersaglieri* but was invalided home early in 1917 and resumed his journalistic career in Milan, having founded there his own newspaper, *Il Popolo d'Italia.*

His Post-War Political Attitude. After the War he became what, for want of a better name, may be called a national Socialist. He was both a patriot and a social revolutionary. He outdistanced the Nationalists in making imperialistic demands and in condemning the Entente and such Italian politicians as Orlando and Nitti for mutilating the peace. He was also one of the earliest supporters of the D'Annunzio expedition to Fiume. At the same time he affected to be contemptuous of the lack of revolutionary fervor and the opportunism exhibited by official Socialism, calling the bureaucracy of the party and the affiliated labor leaders defeatists and traitors to the Socialist cause. His attitude towards the Socialist leaders was undoubtedly influenced somewhat by personal animosity growing out of the severance of his official connection with the party in 1914.

Organizes Fascism. In March, 1919, at the Piazza San Sepolcro in Milan, Mussolini organized his first *Fascio di Combattimento* or fighting band. The fifty odd individuals who became members of the *Fascio* were, like Mussolini, chiefly renegade Socialists and demobilized soldiers. In a manifesto issued for this new movement in November, 1919, Mussolini advocated an ultra-democratic franchise, various forms of social insurance, an eight-hour day, worker participation in factory management, and a capital

levy. His Socialist faith, thus indicated, did not falter during the early part of 1920. He justified seizure of the land by the peasant cultivators and somewhat guardedly supported the workmen in their seizure of the factories.

Shift to Nationalism. Gradually, however, his tone changed. His Socialism became more tepid. He began to assert that the organized Socialist party was going too far and his denunciations of the Socialist leaders knew no bounds. By the end of 1920, as Salvemini says,[1] he ceased to call these leaders ineffectual revolutionaries and began calling them dangerous Bolsheviks. At the same time Mussolini began vigorously expounding nationalism, the other facet of his post-War political faith. The only practical explanation of this change seems to be that Mussolini's *Fasci* were rapidly filling up with middle-class youth intent upon revenge upon Socialism; and Mussolini began to see that political success lay no longer along the revolutionary path of Socialism but along the revolutionary path of bourgeois anti-Socialism.[2]

Leads the Reaction against Socialism. At all events, in the fall of 1920, it was his *Fasci* who became the sword and buckler of the middle class and capitalist counter-offensive against Socialism; and that offensive soon achieved considerable proportions. In all the principal cities and towns of the North, Fascist squads of young hooligans armed with castor oil, clubs, and more lethal weapons assaulted and often killed Socialists and workmen, and looted and wrecked the headquarters of their political organizations, their co-operatives and their newspaper offices. The town halls of many of the communes which had been won by the Socialists in the elections of 1920 were occupied, and the Socialist syndics and councilmen forced to resign their posts. The squads also extended their operations to the countryside, terrorizing the agricultural laborers and their organizers. They even attacked the co-operative organizations of the Catholic Populists whom the landed gentry accused of being "white Bolshevists" because of their advocacy of land distribution. In many areas violence approached the status of civil war when the attacked Socialists and workers struck back. Almost everywhere, however, the Fascists won, partly because their victims lacked leadership and morale, partly because the Fascists were aided financially and

[1] *The Fascist Dictatorship in Italy* (New York, 1927), pp. 52-53.

[2] For Mussolini's early career see his *Autobiography*, trans. by R. W. Child (New York, 1928), pp. 1 ff.; see also H. Finer, *Mussolini's Italy* (New York, 1935), pp. 98 ff.

otherwise by the bourgeois elements and by the but poorly concealed sympathy of the police and the military.[1]

Post-War Parliamentarism

The Nitti Government. During this period of civil strife the Italian Government pursued what amounted to a policy of political *laissez faire,* apparently preferring to allow the storm in the country to take its course and blow itself out. On the fall of Orlando, in June, 1919, following his disappointing performance at the Paris Peace Conference, the seals of office were intrusted to Francesco Nitti. His accomplishments were virtually nil. Torn between the Left and Right, he found it difficult to maintain even the prestige, let alone the authority, of the Government. The Nationalists prevented him from taking effective action on the Fiume question; the Socialists would not permit him to lower the war-time bread subsidy which was ruining the treasury. The police, augmented by a force of 25,000 Royal Guards which Nitti created, were incapable of maintaining order. Even the new universal suffrage and proportional electoral reforms, which his administration enacted, were chiefly of the nature of a concession to the Socialists. Twice after December, 1919, he resigned his office only to reassume it for want of a successor. In June, 1920, he gave way for the last time and the King called upon the parliamentary wizard of pre-War days, Signor Giolitti, to head a new Cabinet.

Giolitti Returns to Power. Giolitti's cabinet lasted from June, 1920, to July, 1921. It thus covered the period of the factory occupations and of the Fascist middle-class war against Socialism. With respect to both of these happenings he pursued Nitti's policy of neutrality, although there is evidence that his neutrality towards the Fascists was benevolent. Nevertheless Giolitti did succeed in reasserting, in a measure, the authority of the Government. Where Nitti had failed in abolishing the bread subsidy, he succeeded. He also succeeded in liquidating the Fiume question. By the Treaty of Rapallo, which his Foreign Minister, Count Sforza, negotiated with Yugoslavia on November 12, 1920, Italy agreed to a definitive boundary for her new possessions in the Istrian peninsula, gave up her claim to most of

[1] For the middle-class Fascist counter revolution, see Salvemini, *op. cit.,* pp. 46 ff.; see also Mowrer, *op. cit.,* pp. 344 ff.

Dalmatia, and agreed to make Fiume a free city.[1] D'Annunzio refused to abide by this treaty, and it became necessary to use force against him. On Christmas Day, 1920, an Italian naval vessel dropped three shells on his palace in Fiume. Thereupon D'Annunzio hurriedly gave up his power and returned to Italy.

Elections of 1921. With affairs proceeding in this tolerable fashion, Giolitti, in April, 1921, unwisely decided to dissolve Parliament and order new elections. His ostensible reason was the lack of a sound majority for his Government; his real reason apparently was to reduce the power of the Socialists and possibly of the Populists, and increase the representation of the conservative Liberal parties and the parties of the Right. He hoped to do this under the proportional system of representation by uniting the conservative parties in single lists. His lists even included the Fascists and the Nationalists. His strategy, however, miscarried. In the elections in May, the Socialists, including the new independent Communist Party, lost only 21 of their 156 seats in the previous Chamber; the Populists increased their mandates from 100 to 106. In addition the Fascists secured a delegation of 35 deputies, their first in any Italian Parliament; and contrary to Giolitti's expectation that he could make them submissive allies, the Fascists assumed an attitude of thoroughgoing intransigence on the extreme Right of the Chamber. Victim of his own miscalculation, Giolitti subsequently resigned (June, 1921).

The Cabinet System Breaks Down. Now ensued that most curious and ultimately most tragic of all episodes of Italian parliamentary life, an almost perpetual cabinet crisis. Whereas in the immediate post-War cabinets, the politicians who composed them had largely failed to govern, after Giolitti's retirement, there were not even politicians to form a Cabinet, let alone govern. The seals were first intrusted to Ivanoe Bonomi, a politician who had traveled far to the Right since 1912, when he had been ousted from the official Socialist party. Bonomi ruled with the support of the Giolittian conservative Liberal groups and of the Catholic Populists. When the former, wishing for the restoration of their chief, withdrew their support early in February, 1922, Bonomi resigned.

The Facta Cabinets. In accordance with the pre-War formula of cabinet making, the return of Giolitti seemed to be in order.

[1] Fiume was subsequently (1924) incorporated into the Italian kingdom. For a description of the negotiations leading to the Rapallo Treaty see C. Sforza, *Makers of Modern Europe* (Indianapolis, 1928), pp. 244 ff.

The leaders of the conservative Liberal parties clearly wanted him; and so did the King. Giolitti's anti-clericalism and his previous antipathy towards the Catholic Populists had, however, alienated the Populist leader, Don Sturzo, and he issued his famous "veto on Giolitti," declaring that no Populist could serve under the former Liberal premier. Without the Populists no Giolitti Cabinet was possible. Negotiations continued for some weeks, at the end of which Luigi Facta, a political lieutenant of Giolitti, but colorless enough to win at least the indifferent toleration of the Populists, became prime minister. Under Facta the Italian Cabinet simply abdicated. It had no policy, foreign or domestic; it had not even the firmness necessary to enforce elementary respect for law. Voted down in Parliament in July, the Facta Cabinet, after some weeks of fruitless negotiation to form a successor, had to stagger on simply because no other group of politicians could or would undertake the responsibility.[1]

Possibilities of Parliamentary Revival. The inglorious reign of Facta and the seeming incapacity of parliamentary politicians to form a stable Cabinet during the summer of 1922 are frequently regarded as evidence that the Italian parliamentary system was in its death throes. Such an interpretation appears all the more plausible in view of the fact that when the Facta Cabinet finally surrendered its authority, it surrendered to the forces of revolution. There is, however, another interpretation and probably a more accurate one. The maneuverings of the spring and summer of 1922, instead of indicating that parliamentary government in Italy had reached the end of its tether, indicated rather that this system of government had not yet successfully adjusted itself to the new political forces which the post-War period had brought into being. The two elections of 1919 and 1921 had transferred the fulcrum of parliamentary power from the old conservative Liberal groups to the newer parties on the Left, the Catholic Populists and the Socialists. The conservative Liberal politicians, dominated by Giolitti, were naturally loath to face the consequences of this political change and give up their former position of primacy. At the same time the Catholic Populists, not too successfully commanded in Parliament, found the conditions underlying their support of cabinets irksome and the rewards incommensurate with their numerical power in the Deputies. Socialism, the other segment of the new Left, had frittered away its strength in a policy of parliamentary non-collabora-

[1] For these developments see Ferrari, *op. cit.*, pp. 36-43.

tion and the more moderate elements within its ranks were not quite ready to assume the parliamentary responsibilities to which they were entitled. Given time the situation might have righted itself and the adjustment between the older and the newer parliamentary forces might have been consummated. Ultimately a firm democratic coalition, composed of moderate Socialists, Populists, and remnants of the old Left Center might have been forthcoming to take over the helm in succession to the Giolittian cabinets of pre-War days. Signs, indeed, were not wanting that such a development was maturing. In August, 1922, Turati, leader of the Reformist Socialists, had gone to the King with overtures for a concentration Cabinet. Moreover, early in October, 1922, as already indicated, Turati's Reformists broke away from the revolutionary elements of the party and formed their own organization with the obvious intention of pursuing a policy of parliamentary collaboration. Had such developments been given an opportunity to mature, the Facta period might have been merely a necessary period of parliamentary transition.

Fascism Overthrows the Government

Mussolini Claims the Succession. But by September, 1922, the crisis in the Government had been protracted for so long that it had become a danger to the State. The people were weary of political incompetence and official timidity; cabinets had become a laughing stock and the butt of bitter satire; and even the responsible elements of the nation began to conclude that Parliament was an impossible muddle. Moreover, among the forces battling for power in the State, a new element had appeared in the person of Mussolini and his *Fasci.* The problem of the succession to the pre-War liberal Government had intrigued Mussolini from the very first days of his post-War political career. As early as March, 1919, when he formed his first *Fascio,* he had declared that the succession to that Government was open and that it should devolve upon him and his organization. "We, we alone," he had said, "have the right to the succession, because we, we were the men who forced the country into the War and into victory." Thereafter, whether he was fighting the middle class in the name of his own brand of Socialism, or orthodox Socialism in the name of the middle class, this problem of the succession was for him of paramount concern.

His Parliamentary Maneuvers. As already indicated, in the elections of May, 1921, Mussolini and his *Fasci* emerged with 35

deputies. In November of the same year he welded his *Fasci* into a national party, the *Partito Nazionale Fascista,* with himself as the unquestioned leader. He thus had the orthodox instruments for a parliamentary career and indications were not wanting that he might take up such a career. Both in the spring and summer of 1922 efforts were made to secure Mussolini's adherence to a coalition ministry; but those efforts proved abortive because he demanded more portfolios than his numerical strength in the Deputies entitled him to. Mussolini appears also to have coquetted with the idea of leading a parliamentary coalition consisting of Socialists, Populists, and Fascists. Indeed he went so far as to suggest such an idea in his newspaper.

Turns Again to Direct Action. But with only 35 deputies in Parliament and some of them not too loyal it seemed quite clear that orthodox parliamentary methods were not likely to bring Mussolini the coveted succession. The more vigorous elements in his party, fresh from the successful vigilantist war on Socialism, were moreover not interested in parliamentary methods. Indeed all their experiences and ambitions led them in the other direction, in the direction of violence and the appeal to the street. Sometime in the summer of 1922 Mussolini appears to have relinquished his incipient parliamentary ideas and, to achieve his ambition, turned to the means and instruments to which he and his movement had become accustomed. Although attacks upon labor leaders and left-wing politicians continued, the primary object was not now, as in 1921, to wage war against "subversive" classes but to demonstrate the weakness and futility of the Government itself and to bring about its destruction.

Mussolini Menaces the Government. The new aims of Fascist vigilantism were forcibly indicated by Mussolini in July, 1922, when the first Facta Cabinet resigned. Mussolini said then it was impossible to support the majority in Parliament and at the same time "act outside as Fascism is now forced to act." He added that Fascism would soon say whether it was to become a legitimate party or instead "a party of insurrection." [1] On that score, however, there was no longer any doubt. Early in August, 1922, the Socialists and the Labor Confederation called a general strike, incidentally broken by the Fascists, to protest against the Fascist revolutionary threat to the State. Within another month Mussolini was himself admitting that he had already matured plans for a *coup d'état.*

[1] *Autobiography,* pp. 164-165.

Fascism Allies Itself with the Army. The *coup* which Mussolini was planning might nevertheless have been ineffective had he not taken steps to insure an alliance with the military. Demobilized officers had come to Fascism as early as the Fiume episode and generals of the army had not been loath to give it their endorsement. The military connection became closer during the "war on Bolshevism" when army as well as police officers fraternized with the Fascist guerrilla squads. After July, 1922, the connection became closer still, certain generals and other high ranking officers of the nation's defense forces identifying themselves openly with the *Fasci* and taking over positions of command. Partly to clinch his hold over the army, Mussolini, late in October, 1922, made a speech in which he recanted his earlier republicanism and came out wholeheartedly in favor of the monarchy. That these tactics were successful seems clear, Mussolini himself remarking that he thereafter had no fear that the army would oppose his plans.[1]

The March on Rome. The Fascist *coup* against the Government came on October 27th in the now famous "March on Rome." Fascist squads had previously been reorganized by military leaders into a militia observing a military discipline, and these, armed with all manner of weapons, now converged from many points upon the Eternal City. The movement was in the hands of a quadrumvirate of leaders consisting of Italo Balbo, Michele Bianchi, General de Bono, and Captain de Vecchi. Mussolini himself remained at his newspaper office in Milan. In command of many strategic local centers, which they had previously seized, and easily commandeering telegraph and railway facilities, the Fascist squads found little difficulty in approaching the environs of Rome. By the evening of October 28th some thirty thousand were either in the capital city or encamped in the immediate vicinity.

Mussolini Prime Minister. In the face of this demonstration and simultaneous attempts of Fascists elsewhere to take over such local governmental posts as they had not yet succeeded in taking, the Facta Cabinet, on October 27th, decided to declare a state of siege. What happened at this juncture is still something of a mystery. Facta took the decree declaring a state of siege to the King for his signature on the morning of October 28th, but brought it back to the Cabinet unsigned. The Cabinet persisted in its demand for martial law and demanded that Facta return

[1] *Autobiography*, p. 175.

the decree for the King's signature. This he did but again without success.[1] The King had apparently received counsel from various sources which caused him to decide that resistance to the *coup* would be useless; and when Facta asked for his signature to the Cabinet's decree the King, contrary to constitutional custom, refused to sign it. The next day, October 29th, following the failure of former premier Salandra to form a Government which would have included Mussolini, the King called upon Mussolini himself and on the 30th appointed him Prime Minister. Thus another victory was won for Fascism's tactics of direct action. It was, moreover, a victory far greater than the earlier one over Socialism and organized labor. This time the Italian Government had itself capitulated. After October 30th there was no longer any doubt who the successor to Giolitti was to be; nor was there much doubt as to what would ultimately happen to the parliamentary system of government.

The Liquidation of Parliamentarism

A Quasi-Constitutional Regime. Considering the illegal manner in which Mussolini had been catapulted to power and the threats he had hitherto delivered against parliamentary institutions, his behavior on the morrow of his assumption of the prime ministership was rather surprising. His ministry was not made up exclusively of Fascists; on the contrary Fascists were appointed to less than half the available posts. Among the remaining offices almost all the parties except the Socialists and Communists were represented. Even the Catholic Populists received two major appointments and six undersecretaryships. It was a Government of national concentration. Towards Parliament, when it assembled, Mussolini was, considering the circumstances, most considerate. To be sure he indulged in some threatening rhetoric. He told the Deputies that he could have kicked them into the street and made a bivouac for his Blackshirt squads out of their gray assembly hall. He added that, for the time being at least, he did not wish to do this. Thereupon he proceeded to ask them and the Senate for a vote of confidence and for special powers for one year in order to effect economies in the government by decree, promising that he would render a full account of his use of such powers. In November, 1922, it would seem that Signor Mussolini did not contemplate an outright dictatorship but, rather, a governmental system in which the ministers of all na-

[1] For some of these developments see Sforza, *op. cit.*, pp. 319 ff.

tionally inclined parties, led by himself and no longer dependent upon Parliament for their tenure, might determine the nation's policy subject to subsequent parliamentary approval. From Parliament, however, he made it clear that he expected "collaboration." Public opinion, somewhat relieved, quickly rallied to the new Prime Minister; and Parliament, in an atmosphere compounded almost equally of fear and relief at the unexpected observance of constitutional proprieties, gave the Government its vote of confidence and passed the special powers bill, Socialists and Communists opposing.

Inconsistencies of the New Regime. But the regime thus envisioned was neither fish nor fowl. There was no clear indication as to what role Parliament was to play nor as to what privileges were to be accorded the various groups within it. As these recovered from their first shock, they began to behave in their accustomed manner, those allied with the Government seeking greater influence as the price of their continued collaboration, those outside the Government opposing it with every parliamentary weapon at their command. It was all quite familiar to the parliamentarian of another day but it was hardly in accord with the "collaboration" which Signor Mussolini expected. In the spring of 1923 an open revolt occurred in the ranks of the Cabinet, when the Populists, incensed at their meager representation in the ministry and at the attacks of the Fascist squads upon their popular political and economic organizations, passed a resolution at their party congress condemning Fascism and its works. Mussolini immediately asked for the resignation of the party's ministerial representatives and the Populists passed over to the parliamentary opposition.

Need for Parliamentary "Reform." Mussolini now decided that to continue the regime he had inaugurated in 1922, it was necessary to broaden Fascism's parliamentary base and make it less dependent upon coalition. A step in this direction had been taken in February, 1923, when the former Nationalist Party, the party of Corradini, Rocco, and Forges Davanzati, had been absorbed by the Fascists. Its parliamentary membership, although of great personal influence and distinction, still did not raise the Fascist deputation in the Chamber to 50. The remainder of the Deputies, more than 485 strong, belonged to Fascism's ministerial allies or to the opposition. It appeared that nothing short of a reconstitution of the Chamber, brought about in such a manner as to give Fascism a dependable majority, could relieve the situa-

tion and give Mussolini the kind of Parliament that his system required.

The Acerbo Electoral Law. Suiting the deed to the need, Mussolini's followers introduced a new electoral law into Parliament in July, 1923. It took its name from the Fascist deputy, Acerbo, who had been its chief draftsman. The law provided for a system of unproportional representation to take the place of the proportional electoral system which had been put upon the statute book in 1919. Specifically the new law, as subsequently amended, stated that the party which polled at least 25 per cent of the total vote in an election would be entitled to two-thirds of all seats in the Chamber, the remainder to be distributed proportionally among the other parties. The law was favored by many of the old Liberal party groups who were still represented in Mussolini's Cabinet. They had held the proportional system partly responsible for the great gains which the extremist parties of the Left had made in the two elections since 1919 and for their own poor showing in those same elections. Even with their help, however, the law would not have passed the Chamber had it not been that the large bloc of Populist deputies were virtually compelled to accept it by means of Fascism's familiar coercive tactics and revolutionary threats.

The Elections of 1924. Once the law was enacted, Parliament was immediately dissolved and new elections were held on April 6, 1924. The Fascists organized their lists with great care, including the names of many conservative Liberal politicians, familiar to voters for a generation, as well as Fascist candidates. The Fascists also exploited to the full their control over the local electoral officials; and with their militia and party squads they greatly improved upon the traditional methods of electoral pressure and corruption. The result was a veritable avalanche of votes for the Fascist lists, the total approximating almost 5,000,000 or about twice as many as were cast for all the other parties. Thus guaranteed a Chamber two thirds of whose members owed their election to Fascism, Mussolini felt that he now had a Parliament which would function as he desired; and he made haste to announce his conclusion to the nation.

Continued Opposition: the Matteotti Affair. Within a month, however, he was to learn that a Parliament with a minority in opposition can be almost as obstreperous as one with a majority in opposition. The new Chamber had no sooner assembled than the spokesmen of the various minority groups, bitter

over the unfair Acerbo law and over the corrupt tactics which the Fascists had used in the election, and growing desperate over the position to which the Fascist squads were reducing their party organizations, began to fill the hall in the Montecitorio with their accusations and denunciations. The most challenging and, for the Fascists, the most irritating of all the spokesmen of the parliamentary opposition was Giacomo Matteotti, one of the leading deputies of the Reformist Socialists. On May 30, 1924, in a two-hour speech, Matteotti delivered a scathing rebuke to the Fascist majority, denouncing their illegal and corrupt electoral tactics and maintaining that such a majority, having been obtained by fraud, had no right to represent the nation. Less than two weeks later Matteotti disappeared. It subsequently developed that he had been kidnaped and murdered by a gang of ruffians who had obviously been hired to commit the crime for political reasons. The evidence, moreover, tended to implicate important personages of the Fascist Party.

The Aventine Secession and the End of Quasi-Constitutionalism. The murder of Matteotti was the climax of the long reign of Fascist terrorism. It also signalized the end of the hybrid regime which Mussolini had set up after the March on Rome. In protest over Matteotti's disappearance and the general excesses of the Fascist squads, Socialists, Populists and Opposition Liberals absented themselves from Parliament, figuratively withdrawing to the Aventine Hill as did the plebeians of old Rome, there to await surcease from tyranny. Only a rump of some 350 Fascists and conservative Liberals remained to carry on the legislative functions; and towards the end of the year even some of the latter, including the former premiers, Salandra and Giolitti, left the Mussolini fold. Opposition to Fascism in the press and the country at large grew by leaps and bounds; and all the elaborate efforts which Mussolini made to reorganize his ministry, cleanse the party, bring the murderers of Matteotti to justice, and stop the sporadic violence of his Blackshirt squads did not serve to appease. By the end of the year it was clear that only two alternatives were open to the man who had led Fascism to victory in 1922: either (1) to restore normal parliamentary life as the opposition demanded or (2) to proceed to an outright dictatorship. Mussolini's own inclinations and the requirements of the movement which he led, and which in a sense controlled his discretion, prevented the adoption of the first alternative. Hence the transformation of the Government into a dictatorship became inevitable.

CHAPTER III. THE ADVENT OF A FASCIST CONSTITUTION

The Transformation of the Government

The End of the Period of Transition. The modified parliamentary phase of Fascism expired during 1925. The end was heralded by a speech by Signor Mussolini in the Chamber of Deputies during the first week of that year. It was a speech full of bold assertions, comparable to the one which he had delivered from the same rostrum shortly after having been invested with the seals of office in 1922. In the earlier forensic effort, it will be remembered, he had told the assembled Deputies that he could have "kicked" them into the street and made a bivouac for his Blackshirt squads out of their assembly hall in the Montecitorio. He had added, however, that restraint was to be his policy; and he had invited the Deputies' co-operation with his Government. In this second speech there was no promise of restraint. The Deputies were told that Fascist prestige, lowered after the events of the Matteotti affair, was to be restored and that opposition to Fascism, from whatever source, was to be extirpated. Probably the most extreme assertion in the speech was the Leader's statement that he and the movement he represented assumed full responsibility for the conditions which had led to Matteotti's murder. The speech had barely been concluded when the new policy became manifest. Press restrictions immediately became more rigorous. All opposition parties were formally dissolved; and such forms of free association as had managed to survive two years of extra-legal harrying were placed under the ban. Full legislative authority was declared to inhere in the rump of the Fascist Deputies remaining after the Aventine had seceded. The Aventine itself was outlawed, its members being forbidden the precincts of the Chamber unless they forswore their allegiance to their respective political parties and agreed to join their Fascist colleagues in supporting the Government.

The Liberal Government "Transformed." At this juncture Signor Mussolini and his colleagues might have proceeded to scrap the existing political machinery and create a new system by revolutionary decree. Various circumstances, however, counseled a different course. In 1925 the Fascist leaders were still far more interested in the substance of power than in constitutional forms. As long as their party was in the driver's seat, it mattered little if some of the forms of the old regime persisted indefinitely. Indeed the preservation of some of these forms seemed distinctly advantageous. Parliament, for instance, its lower house purged of the Aventine and its upper house subject to Fascist "packing," offered a thoroughly tractable instrument for validating whatever constitutional changes Fascism might ultimately contemplate. Moreover the doctrinaires of the party had at the time no well-defined conception of what form the Fascist state would finally assume. In contrast to the situation 10 years later, they were still essentially opportunists and had no available blueprints of a characteristically Fascist political system. Instead, therefore, of razing to the foundations and building anew the machinery of state, Fascism at this stage adopted the policy of gradually remolding or, to use an expression current at the time, "transforming," the machinery then in existence. The process thus initiated has been a lengthy one, unusually so for a regime which prides itself upon its revolutionary vigor. Only as this book goes to press, are the leaders of the new Italy assuring themselves and others that it has reached its culminating point.

Emergence of a New Constitution. But although the process has been a lengthy one, it has also been a thorough one. If landmarks of the former parliamentary regime survive, they are either, as in the case of the kingship, quite innocuous—"dignified" portions of the new constitution as Walter Bagehot would have dubbed them—or else, as in the case of Parliament and the Council of Ministers, so vitally transformed as to lack any resemblance whatsoever to their historic namesakes. To these transformed organs, moreover, Fascism has added organs of its own manufacture with a nomenclature totally unknown to liberal Italy. Some, like the Fascist Grand Council, have been taken over from the administrative hierarchy of the Fascist party and impressed into the service of the State; others, like the Central Corporative Committee, represent the fruit of the now popular corporative ideas of Fascism; still others, like the Chamber of Fasces and Corporations, which recently supplanted the Chamber

of Deputies, constitute a fusion of party and corporative forces. Standing above all is that unique contribution of purely Fascist constitutional science, the Leader of the Party and Head of the Government, the prototype of the modern popular dictator. Thus, however gradual Fascist constitutional evolution may have been, the net result is a system of government altogether different from that which operated in pre-Fascist Italy. Despite apparent survivals of institutions of Giolitti's Government in the Government of Signor Mussolini, about the only thing the former had in common with the latter is the fact that it was controlled by Italians.

Basic Fascist Legislation. The character of Fascism's constitutional legislation reflects the gradual and rather haphazard evolution of the new polity. Statutes of basic significance have been enacted in almost every year of Fascism's existence; earlier statutes, particularly those referring to the structure and competence of Parliament or of the corporative organs, have frequently been supplanted or at least modified by later ones as Fascist State architects received new or more perfect inspiration. The basic laws at present would include at least the following: (1) the law on the Powers and Prerogatives of the Head of the Government (December 24, 1925) which ushered in Mussolini's legal primacy;[1] (2) the law authorizing the Executive to Draft Decrees having the Force of Law (January 31, 1926) which virtually transferred legislative power to the Head of the Government and his ministers;[2] (3) the law Concerning the Discipline of Collective Labor Relations (April 3, 1926),[3] as amplified by the decree law of July 1, 1926,[4] which provided for the public syndical system; (4) the law on Public Security (November 6, 1926),[5] the basic police and security statute of the regime; (5) the law on the Special Tribunal for the Defense of the State (November 25, 1926) [6] establishing a military tribunal for political offenders and increasing penalties for political offenses; (6) the Labor Charter (April 21, 1927),[7] a declaration of social and economic principles promulgated by the Fascist Grand Council and virtually given the force of law

[1] No. 2263, *Gazzetta ufficiale del regno d'Italia* (cited hereafter as *G. U.*), Dec. 29, 1925, no. 301, pp. 5067-5068.
[2] No. 100, *G. U.*, Feb. 1, 1926, no. 25, p. 426.
[3] No. 563, *G. U.*, Apr. 14, 1926, no. 87, p. 1590.
[4] No. 1130, *G. U.*, July 7, 1926, no. 155, p. 2930.
[5] No. 1848, *Raccolta ufficiale delle leggi e dei decreti* (cited hereafter as *R. U.*), 1926, IX, p. 7945.
[6] No. 2008, *R. U.*, 1926, IX, p. 8880.
[7] *G. U.*, Apr. 30, 1927, no. 100, pp. 1794 ff.

by subsequent enactments and judicial decisions; (7) the law on the Fascist Grand Council (December 9, 1928) [1] as amended by a second law reorganizing the Council (December 14, 1929),[2] the two laws making the Grand Council a formal part of the Government of the kingdom; (8) the law on the National Council of Corporations (March 20, 1930) [3] providing for the deliberative assembly of the corporative system; (9) the fundamental statute of the National Fascist Party (March 11, 1938),[4] the latest of a series of such statutes; (10) the law establishing the 22 category corporations (February 5, 1934) [5] and the subsequent law revising the membership of the corporations (January 5, 1939); [6] (11) the decree on Communal and Provincial Government (March 3, 1934) [7] which definitively fascistized local government in the kingdom; and (12) the law instituting the Chamber of Fasces and Corporations (January 19, 1939),[8] this Chamber replacing the former Chamber of Deputies.

The Statuto Preserved. Lack of space forbids reference to at least a dozen other statutes or decrees which, though less important than those just enumerated, nevertheless possess "constitutive" character. No list of Fascist constitutional laws would, however, be complete without the inclusion of the *Statuto fondamentale del regno*.[9] Formerly the basic law of the parliamentary system, it has up to the present been invested with almost equal significance by Fascism. Indeed few legislative acts of constitutional import enacted by Fascist legislators fail to make mention of some provision of this venerable document. How such a meta-

[1] No. 2693, *G. U.*, Dec. 11, 1928, no. 287, p. 5978.
[2] No. 2099, *G. U.*, Dec. 16, 1929, no. 292, pp. 5594-5595.
[3] No. 206, *G. U.*, Mar. 28, 1930, no. 74, p. 1146.
[4] Royal decree of Apr. 28, 1938, no. 513, *G. U.*, May 18, 1938, no. 112, pp. 1848-1855; text also in *Bollettino parlamentare* (cited hereafter as *B. P.*), XII (Apr., 1938), p. 35.
[5] No. 163, *G. U.*, Feb. 20, 1934, no. 42, p. 869.
[6] No. 10, *G. U.*, Jan. 25, 1939, no. 20, text in *B. P.*, XII (Dec. 1938), pp. 111-118.
[7] No. 383, *G. U.*, Mar. 17, 1934, Supplement, no. 65.
[8] No. 129, *G. U.*, Feb. 14, 1939, no. 37, text in *B. P.*, XII (Dec. 1938), pp. 71-80. Translations of many of these organic acts of the Fascist regime or at least excerpts therefrom may be found in Hill and Stoke, *Background of European Governments*, 2nd ed. (New York, 1940), pp. 469 ff., and in "Documents on the Fascist Government of Italy," by H. W. Schneider in W. E. Rappard and others, *Source Book on European Governments* (New York, 1937), III, pp. 7 ff. A translation of the major portion of the decree on Communal and Provincial Government of March 3, 1934, is to be found in a section on Italian local government by H. A. Steiner in *Local Government in Europe* by William Anderson and others (New York, 1939), pp. 339 ff.
[9] For the text, see H. L. McBain and L. Rogers, *The New Constitutions of Europe* (New York, 1922), pp. 550 ff.; W. F. Dodd, *Modern Constitutions* (Chicago, 1909), II, pp. 5-16.

morphosis of the *Statuto* could have been achieved without changing a single word in its text must remain one of the mysteries of Fascist logic. The mystery, however, is lessened somewhat if the exact status of this document, past and present, be briefly reviewed. Though regarded as the touchstone of the political system of liberal Italy, the *Statuto* never achieved the character of fundamental law in the positive juridical sense. No Italian court ever resorted to its provisions to determine the substantive validity of a statute of Parliament or of an executive decree. No court could question any law properly enacted by Parliament or any decree of the executive properly validated by legislative authority. The theory was that as need arose, the organs of Government, and particularly Parliament, rendered authoritative interpretations of the *Statuto*. It was a theory made the more tenable because the *Statuto* provided no means for its formal amendment and because most of its various articles expressly authorized that their meaning be interpreted by the legislative power. Throughout the parliamentary period, therefore, law and custom as well broadened and elaborated the meaning of the *Statuto,* often, it must be confessed, in a manner which by no stretch of fancy could be said to have been contemplated by the *Statuto's* maker.

The Statuto and Fascism. The position thus accorded the *Statuto* in parliamentary Italy may help to explain why Fascism has continued it. The Fascists insist that the document has exactly the same position with them that it had in the preceding regime. For Fascism it is a point of departure just as it was for the Government of Cavour, or Depretis or Giolitti. Like those governments, Fascism is "elaborating" the *Statuto* by legislation. Nor do Fascist spokesmen admit that their elaboration is further removed from the historic meaning of the document than the elaboration given by liberal Italy. On the contrary, in some respects at least, Fascism believes that it has provided a more orthodox interpretation and that it has "restored" the *Statuto*. A commission of jurists, which Mussolini appointed in 1925 to consider constitutional revision, asserted, with some justice, that the *Statuto* never contemplated a Government based upon parliamentary supremacy but one in which legislative and executive powers were clearly separated. The commission contended that an executive responsible only to the King, even a dictatorial one such as has been established, would come closer to the conception

of constitutional structure entertained by the author of the *Statuto,* than any political regime since the days of Cavour.[1]

Uninhibited by the *Statuto* in evolving its polity, Fascism has also reaped some practical advantages from preserving it. Revolutionaries though they are, and ordinarily disdainful of legal fictions, Fascists have hitherto welcomed the reputation of legal continuity with which the perdurance of the constitutional document invests their regime. Moreover, since the *Statuto* covers in a very thorough manner the perquisites and prerogatives of the monarch and of the reigning House of Savoy, the maintenance of the document has also served to hold in abeyance potentially embarrassing questions concerning an institution whose good will Fascism wishes to hold. It should be added that Fascist theorists are themselves beginning to wonder whether the fiction of reconciling their constitutional changes with the *Statuto* ought to be maintained indefinitely. At any rate steps were taken in 1939 looking towards a total revision of this famous document.[2]

The Monarchy

Fascism Continues the Monarchy. It is to an examination of the monarchy under Fascism that we now turn as the first of the major political institutions of the regime with which the remainder of this chapter will be concerned. Although Fascism was once republican in its sympathies, since coming to power it has never publicly wavered in its allegiance to the monarchical tradition. Reigning authority in contemporary Italy is still vested in King Victor Emmanuel III, the man who served as King for a generation under the parliamentary system and who signed the royal decree making Mussolini President of the Council of Ministers on that fateful October 30, 1922. During Fascism's ascendancy, the King has acquired two new titles. Following the conquest of Ethiopia by Italian troops and Blackshirts in May, 1936, he became possessed of the title of "Emperor of Ethiopia." [3] In 1939, following the Easter week conquest of Albania, he also acquired the royal title to that kingdom.[4] The King-Emperor and

[1] See translated excerpt from the report of this commission in H. W. Schneider, *Making the Fascist State* (New York, 1928), pp. 321 ff.

[2] See *Fascist Era Year XVII,* published by the Fascist Confederation of Industrialists (Rome, 1939), pp. 31-32.

[3] Royal decree law of May 14, 1936, no. 831, *G. U.,* May 18, 1936, no. 115, p. 1602.

[4] For the resolution of the Albanian Constituent Assembly offering the Albanian Crown to Italy's King and provisions of the new Albanian Constitution under which

the royal family continue to enjoy various perquisities, including a civil list of about 20 million lire and the right to possess Crown property such as the various palaces, villas, and Crown chattels.[1] The King's person is held sacred and inviolable, and Fascism has restored the death penalty for attacks upon him. The royal succession, controlled by the Salic Law, remains vested in the House of Savoy, the heir-apparent being Victor Emmanuel's eldest son, Humbert, Prince of Piedmont. According to the legislation of December, 1928, establishing the Fascist Grand Council as an organ of State, the Fascists have at least implicitly asserted their right to control the succession. In this legislation the royal succession, as well as the powers and prerogatives of the Crown, are made matters of constitutional significance and the Grand Council must be consulted before any change affecting them may be proceeded with.[2]

The King's Position in the Government. In the practical affairs of government the King is probably more of a figurehead under Fascism than he was under the parliamentary regime. Nominally the executive power in its entirety and a portion of the legislative is his; according to the phraseology of the *Statuto,* the King declares war, makes peace, commands the armed forces, appoints officers of State, summons, prorogues and dissolves Parliament, approves and promulgates laws and royal decrees, and grants pardons.[3] Actually, as in the parliamentary period, all these powers are exerted in the King's name by the principal executive and administrative officers of the Crown. As we shall see in a moment, most of these officers exert their power under the supreme control of the Head of the Government, the office which Fascism created for Mussolini. The Head of the Government assumes complete control over the discharge of the constitutional powers of the King. It remains for the latter to bless the formal acts of Government and administration with his signature or other form of royal approval when such approval is legally required. Even here he normally has no discretion. In addition the King may exert such informal influence over the course of public policy as he may be capable of exerting.

Potentialities of Kingship under Fascism. Although the King is thus reduced to a position of virtual impotence in the practical

the Crown is accepted see *Bollettino delle Assemblee Legislative* (formerly *Bollettino parlamentare*), series 2, XIII (July, 1939), pp. 74, 75-80.

[1] Art. 20, Dodd, *op. cit.,* II, p. 8.

[2] Art. 12, see *G. U.,* Dec. 11, 1928, no. 287, p. 5978.

[3] Arts. 4-10, Dodd, *op. cit.,* II, p. 5.

management of public affairs, it must be added that under certain circumstances it is conceivable that he might become a real power. After all it was the King's decree and largely the King's will which legally brought Mussolini to power. As Head of the Government Mussolini is technically responsible to the King for his acts. Legally it is possible for the King to dismiss him and, with the collaboration of the Grand Council, which is empowered to make nominations for *il Duce's* office, appoint another in his stead. Should *il Duce's* office become vacant for any reason, this power of appointing a successor would come into operation. Although the Grand Council might exert most of the discretion in the premises, it is conceivable that the King's share would not be inconsiderable. Under Fascist theory, moreover, sovereignty is attributed to the State as a corporate entity rather than to the people or to some other traditional source. Since the King is officially recognized as the Head of the State, he personifies sovereign power in Fascist Italy; in theory at least he is recognized as the ultimate source of constitutional authority. Such a conception of the King's position, although largely mystical nonsense at the moment, might become important. Should the Fascist order break up or become unstable, the nation would quite properly turn to the monarchy as the only remaining source of constitutional authority and political discipline. Thus though the King's present function appears to be that of providing a royal façade for Fascism, it is not impossible that in the course of events he might become, for an interval at least, a political organ of the greatest practical consequence.

The Head of the Government

Creation of the Office of Head of the Government. If Victor Emmanuel III is Head of the State, Mussolini is Head of the Government (*Il capo del governo*). Fascism created this office for its chief in December, 1925, by transforming radically the prime-ministership of the parliamentary regime.[1] Although the act effecting the transformation is one of the first, if not the very first of the constitutional laws of Fascism, it is still the most important. In it is to be discovered the legal warrant for what is, by all odds, the most vital feature of the Fascist polity, i.e., the broad powers over the management of public affairs confided to Signor Mussolini. For the exercise of those powers he owes responsibility to no other authority than the King; and that respon-

[1] Law of Dec. 24, 1925, no. 2263, *G. U.*, Dec. 29, 1925, no. 301, p. 5067.

sibility, as we have already indicated, is normally merely a nominal one.

The Head and the Ministers. The first of the prerogatives of the Head of the Government involves his control of the great Ministers of State and, through them, of the general administration of the Government. Of the Ministers there are at present 15. Although their formal appointment rests legally with the King, Mussolini controls their nomination and, in practice, their appointment. He controls their administrative discretion to the point of personally countersigning their more important departmental orders and decrees; he may also remove them at will. Unlike the Prime Minister of the former regime, the Head of the Government is in no sense the Ministers' colleague; nor is his station among them that of *primus inter pares;* rather, like Bismarck under the Hohenzollern Imperial Constitution of Germany, he is the Ministers' administrative chief and they are his official subordinates. The law creating Mussolini's office itself declares that he "directs and co-ordinates activities of the Ministers" and "settles disputes arising among them." Mussolini is fond of using a military figure to express the relations existing between the Head of the Government and his Ministers, likening the former to a commander-in-chief and them to loyal subalterns.

Not content with his formal power over them, Mussolini frequently assumes several of the portfolios himself. Following the most recent Cabinet change on October 31, 1939, Mussolini held four ministerial portfolios in addition to his Headship of the Government. These were the vitally important Interior post and the three defense ministries, of War, Navy, and Aeronautics. About four years ago he held, in addition, the portfolios of Foreign Affairs, Colonies, and Corporations. Although he thus holds fewer portfolios today than formerly, this indicates no diminution of his control over the remaining ministerial portfolios; for as an American writer has observed, "the men bearing those portfolios are his (Mussolini's) liegemen, under his discipline, trained under his supervision." [1] The actual administrative duties involved in the posts which Mussolini annexes to his own person devolve upon an understudy, officially an undersecretary of the ministry concerned. Another usage affecting the Ministers which demonstrates Mussolini's ascendancy is that known as "chang-

[1] H. R. Spencer, *Government and Politics of Italy,* copyrighted by World Book Co., Yonkers, 1932, p. 201.

ing the guard." At irregular intervals almost the entire ministerial personnel may suddenly be reconstituted. Some Ministers are transferred from one post to another; others are relieved of ministerial duties and appointed to different positions or else retired.[1] The usage is undoubtedly valuable in that it stimulates alertness and attention to duty and prevents the development of bureaucratic ossification, a malady to which regimes such as the Fascist are peculiarly susceptible. The usage is also valuable as a means whereby the Head, without making his action too pointed, may remove a Minister who has become too popular or who has earned the Head's official or personal displeasure. In this sense "changing the guard" is the Italian Fascist version of a dictatorial "purge."

The Head and the Council of Ministers. The various Ministers, together (since 1938) with the Secretary of the Fascist Party, constitute the ministerial cabinet or Council of Ministers. Under Fascist law the Council of Ministers must still be called together to confirm major appointments and to authorize important decrees. It is expected, moreover, to discuss the general policy of the Government and to formulate the outlines of that policy although, as we shall see presently, the regime has developed other collective bodies which, in a measure at least, have usurped the deliberative functions of the historic ministerial council.[2] As Head of the Government, Mussolini is authorized to preside over the Council of Ministers, that prerogative being not only implied but specially confirmed by the law of 1925, which subjoins to his major title the incidental one of Prime Minister.[3] Mussolini is thus the conciliar as well as the administrative chieftain of the Ministers. His is the right to fix the agenda for their collective deliberations, to limit the length of their discussions and, it goes without saying, to control the tenor of those discussions and cast the deciding vote, if a vote be cast.

The Abolition of Parliamentary Control. From the foregoing it clearly appears that Mussolini as an individual is "the Government" in Italy quite as certainly as is the Cabinet in Great Britain. But his personal power in this sense is officially far greater than that of the British Cabinet, for that body is

[1] For one of the more recent of such changes of the guard see *New York Times*, Nov. 1, 1939. On this occasion Mussolini removed at least six cabinet ministers.

[2] See p. 668.

[3] Mussolini's complete title under the legislation of 1925 is Head of the Government, Prime Minister, Secretary of State.

still collectively responsible for its general conduct of affairs to the British Parliament. Mussolini, on the other hand, has no parliamentary responsibility. As already related [1] the Fascist Constitutional Commission of 1925 decided that the parliamentary responsibility of the executive not only contradicted Fascist tenets but ran counter to the traditional principles of the *Statuto*. It was for this reason that, in the law of 1925, the Head was declared to be responsible to the King alone. Hence the erstwhile privilege of the Italian Parliament to vote censure and no confidence in the ministry was abolished. At the same time the law rendered meaningless the existing parliamentary privileges of interrogating and interpellating the Ministers by its inclusion of the notorious stipulation that the parliamentary order of the day might contain no subject of which the Head had not previously approved. The net effect of this destruction of parliamentary responsibility was to leave Mussolini, as already pointed out, constitutionally a free agent.

Other Prerogatives of the Head of the Government. The powers of the Head of the Government are by no means exhausted in the field of executive policy and administration. His office entitles him to the chairmanship or presidency *ex officio* of a great variety of judicial, administrative, and deliberative tribunals. He plays the leading role in the corporative organs which have been recently elaborated. The law instituting the Chamber of Fasces and Corporations makes him *ex officio* a part of the legislative organization. In conjunction with his leadership of the party, also officially recognized, he has become the primary authority in every party council or activity, most of which have now been given a public significance. The wider ramifications of Signor Mussolini's position as Head of the Government will become apparent as we consider in detail the remaining organs and processes of the regime. Suffice it to say at this point that his legal prerogatives, quite aside from his pre-eminence as a political leader, make him the focal point of the entire political system. Authority of every kind, executive, legislative, and administrative, is made to converge upon him or to radiate from him; and the traditional nineteenth-century conceptions of the separation of governmental powers and of the autonomy of administrative agencies have been abandoned in favor of the formal dictatorship of a single person.

[1] See p. 625.

The National Administration

Ministerial Departments. As previously indicated the administration of the kingdom is confided chiefly to some 15 ministries. These are, respectively, Foreign Affairs, Interior, Finance, War, Navy, Aeronautics, National Education, Justice, Public Works, Agriculture and Forests, Communications, Corporations, Italian Africa, Popular Culture, and Foreign Trade and Exchange. These 15 ministries represent the culmination of many changes in structure since 1922. Former ministries, such as those for the Liberated Regions, Treasury, Labor, and Commerce and Industry, which existed when Signor Mussolini came to power, have been abolished and their activities transferred to other units. Other ministries have had their titles changed and their activities expanded or reduced, usually the former. This has happened in the case of the Ministry for Italian Africa which, before May, 1937, was known as the Ministry for the Colonies. The change of name was made following the conquest of Ethiopia, when that area was consolidated with the formerly separate colonies of Italian Somaliland and Eritrea to form the single vice-regal domain of Italian East Africa. The economic exploitation and colonization of this area, now being prosecuted by the Government, makes this ministry far more important than its predecessor was. A second ministry with a changed title is that for National Education, known before 1922 as the Ministry for Public Instruction. The centralization of control over public education, and the growth of public authority over private schools has greatly enhanced the importance of this administrative unit. Still another transformed ministry is that for Communications, which, merging under its control the postal, telegraphic and telephonic services, railways, and the merchant marine, took the place, in 1924, of the former Ministry of Posts and Telegraphs.

Ministries Created by Fascism. Some of the present-day ministries are entirely new ones. One of these is the Ministry for Aeronautics, established in 1925 and given supervision over an arm of the defense services to which Fascism has been particularly partial. Another new department is the Ministry for Popular Culture. The work of this unit was first intrusted to an Undersecretariat for Press and Propaganda in 1935 under the present (1940) Foreign Minister, Count Galeazzo Ciano. Subsequently, in the summer of 1937, it was raised to the status of a full-fledged ministry and given its present name. It is Italy's version

of the propaganda ministry, regarded as so essential by all contemporary dictatorships, and controls the nation's press, radio, stage, cinema, and tourist activities in the interests of "political and moral enlightenment." [1] A third new ministry is that for Foreign Trade and Exchange, created in 1937, to supervise the effort to balance Italy's foreign trade, regulate her international credit position, and promote her internal policy of autarchy, given great impetus following the imposition of the League of Nations sanctions in 1935.

The Ministry for Corporations. Most important among the new creations is the Ministry for Corporations, established in July, 1926. The growth of this unit has been concomitant with the evolution of the syndical, and latterly, of the corporative features of the regime.[2] The Corporations Ministry was relatively unimportant until 1929, when it took over most of the responsibilities of the Ministry of National Economy, itself a combination of the three former Ministries of Commerce and Industry, Labor, and Agriculture.[3] The Ministry of National Economy was thereupon dissolved. The Corporations Ministry exercises jurisdiction over the occupational syndicates, and supervises the enforcement of labor legislation, labor contracts, and most of the legal regulations imposed upon commerce and industry.[4] The creation of the new Ministry of Foreign Trade and Exchange in 1937 took from the Corporations Ministry an important division of its former activity; nevertheless it remains one of Fascism's most powerful administrative units for the regulation of internal affairs of an economic character.

Remaining Ministries. The other ministries have remained much as they were in 1922. Practically all of them, however, have acquired new significance. This observation applies especially to the defense ministries and to the Ministry of Foreign Affairs, whose growing prestige and influence reflect the larger political role which the present Government essays to play in the world. The same observation applies to the Interior Ministry, whose authority has been enhanced by the centralization of local government. The fact that the Head of the Government has held this portfolio for almost the whole of the time since he became

[1] The activities of this ministry are also commented upon on pp. 705-706.

[2] See chapter V.

[3] The Agriculture section of the Ministry of National Economy was not added to the Corporations Ministry, but became a separate Ministry of Agriculture and Forests, in effect reviving the Agriculture Ministry which had existed before 1925.

[4] For a fuller account of this activity see pp. 679-680.

Prime Minister testifies to the vital place this department enjoys in the Fascist polity. Other units which have greatly increased their activity since 1922 are the Ministry for Agriculture and the Public Works Ministry.

The "Consultative" Administration. In addition to the ministries there are certain incidental bodies, attached to the central administration, of which mention should be made. Of these the most important and the most distinguished is the Council of State (*Consiglio dello Stato*). Consisting of about 40 councilors divided into several sections, its duties are like those of the body with the same title in France. Individual Ministers must seek its advice and often secure its approval before issuing departmental regulations or decrees. It also determines controversies of a jurisdictional nature between various branches of the administration and serves as the court of last resort in the Italian system of administrative jurisprudence.[1] The second agency is the State Attorney's Office (*Avvocatura erariale*). It represents the Government in civil actions in the courts, renders legal advice, and scrutinizes the form of proposed decrees. Finally must be mentioned the Court of Accounts (*Corte dei Conti*), whose chief duty is the auditing of the Government's expenditures. Although this court cannot annul royal decrees, it does have the formal duty of ascertaining that they are consistent with law and of registering them. This function, however, has become far less important today than it once was.[2] All these agencies have in recent years been attached directly to the office of the Head of the Government where, presumably, they are subject to his control.

New Administrative Machinery. As subsequent pages will show, the extension of public jurisdiction under Fascism, particularly in the economic field, has brought into being a variety of new administrative machinery—syndical agencies, corporate organs, and institutes. Few of these new administrative units, however, have not been absorbed into existing administrative organization. The centripetal tendencies of dictatorship and the traditional emphasis upon symmetry in Italian bureaucratic organization have caused most of them to be subordinated, directly or indirectly, to one or another of the ministries, even as the ministries themselves have been subordinated to the Head of the Government. A possible exception to this rule are the Institutes

[1] See p. 648.
[2] F. L. Ferrari, *Le Régime fasciste italien* (Paris, 1928), p. 115 (n.).

(*Istituti, Enti Nazionali*) which were created in considerable numbers after 1930 when the economic depression reached its lowest level. Most of these are quasi-public corporations and are not regarded as part of the regular administrative machinery of the State. Except for some of the more important ones, like the Industrial Reconstruction Institute and the Institute for the Mobilization of Credit,[1] most of these bodies will probably be liquidated eventually or else absorbed in the new corporative structure.[2]

The Civil Service. The personnel policy of the Italian bureaucracy has closely followed the French. Officials and employees of the State have been classified and graded in five major divisions; and, for many years, examinations, written or oral, or some other competitive device, have been employed to select recruits. University training of a fairly specialized type is usually regarded as a necessary prerequisite for application to the highest division of the service, that is, Class A, members of which are appointed to advisory and directive positions. Thus, for the foreign service, graduates of the universities who have specialized in law, economics, or political science are preferred. Applicants for Class B who, if successful, are assigned to executive and auditing functions, are normally required to have diplomas from a *liceo,* the equivalent of an American college, or from a technical school.[3] Examinations are conducted by the higher personnel of each ministry under the nominal direction of the Minister. Preference is shown only to non-commissioned officers of the defense forces with a long record of service who apply for positions in the lower or non-specialized brackets. Each class is distinct and there is normally no transfer from one to another. Promotions to the higher grades in each class are determined by the head of each ministry and a ministerial council of administration consisting of the directors of the major divisions of the ministry.

Fascist Purification. Hungry for office and intent upon ousting every enemy within the ramparts, Fascism, once it had come to power, quickly turned its attention to the "purification" of the public service. A decree law of December 30, 1923, declared in effect that a public servant must be a good Fascist and left it to the authorities of each ministry to determine whether his con-

[1] See p. 689.
[2] See p. 699.
[3] See Aldo Lusignoli, "The Italian Civil Service" in L. D. White and others, *The Civil Service in the Modern State* (Chicago, 1930), p. 303.

duct, "civil, moral, and political," could be approved.[1] The ouster of a considerable number of servants who were politically suspect followed during the next two years. By one means or another Fascists have also succeeded, since 1926, in introducing large numbers of party men into the upper brackets of the service. This is notably true of the foreign service personnel, of the prefectoral appointees, and of the bureaucracy in the Ministry of Corporations.[2] The total number of the personnel now attached to the central ministries approximates about 700,000; in recent years the total has increased by an annual increment of about 20,000.[3] This number does not include the servants in State or quasi-State enterprises or local governmental personnel; nor does it include the members of the party bureaucracy or of the syndical hierarchy. However closely positions in these areas may in fact be assimilated to the Government, they are still considered as autonomous and are looked upon as spoils for those meriting the favor of the political leaders.[4]

Organization for Public Employees. The legislation which organized the system of publicly controlled syndicates in 1926 [5] was not extended to public employees; hence they are not a part of that system and cannot enter into collective work contracts with the Government. Indeed persons attached to the defense services or to the Ministries of Foreign Affairs, Interior, and Italian Africa have no right of organization whatsoever; neither have judges nor professors in the universities. To all other public employees, national and local, the right of limited organization has been extended, provided the consent of the appropriate authorities is secured.[6] At present such employees are grouped into five national associations with a membership of some 600,000,[7] including national and local government employees, workers on State enterprises such as the postal, telephone, telegraph, and railway systems, and school teachers. To enhance their prestige, which has never been very high, these associations of public

[1] Royal decree law of Dec. 30, 1923, no. 2960, *R. U.*, 1923, X, pp. 9242-9289. For an English translation see White and others, *op. cit.*, pp. 318-339; see also law of Dec. 24, 1925, no. 2300, *G. U.*, Jan. 4, 1926, no. 2, p. 11.

[2] Cf. H. D. Lasswell and R. Sereno, "Governmental and Party Leaders in Fascist Italy," *Amer. Polit. Sci. Rev.*, XXXI (Oct. 1937), 921.

[3] *Annuario statistico italiano* (1937), 214.

[4] See p. 681.

[5] See p. 676.

[6] See art. 11 of law of Apr. 3, 1926, no. 563, *G. U.*, Apr. 14, 1926, no. 87, p. 1590; art. 92 of royal decree of July 1, 1926, no. 1130, *G. U.*, July 7, 1926, no. 155, p. 2390.

[7] See p. 666.

servants have been placed under the sponsorship of the Fascist Party and are technically considered as belonging among the party's auxiliary organizations.[1]

Fascist Legislative Institutions

Executive Control of the Legislative Function. It will be recalled that the parliamentary responsibility of the executive was formally abolished in 1925 by the statute which created the Head of the Government.[2] It will also be recalled that, in taking such a step, Fascist theorists insisted that they were merely restoring the separation between the executive and the legislature which the *Statuto* had originally contemplated. This thesis, however, was flatly contradicted by the statute in question since it conferred upon Mussolini a virtual suzerainty over parliamentary action. After 1925 neither a bill nor a motion could be placed upon the parliamentary agenda unless he consented. In substance this meant that any measure of legislation, sponsored by a private member, had first to secure executive approval before it could be proceeded with. In addition the Head of the Government was empowered to resubmit a rejected bill for a second vote within three months, the vote in such a case to be taken without debate. He was also authorized to demand that a bill rejected by the Chamber of Deputies should forthwith be considered by the Senate.[3] Coupled with the executive's traditional privilege of introducing its own bills (*disegni di legge*) in Parliament, these changes virtually made the Head of the Government the initiator of all legislation and reduced Parliament to a mere ratifying body with limited discretion. Instead, therefore, of separating the legislative and executive departments, as some of its sponsors insisted at the time, the act of 1925 simply substituted executive control over Parliament for the former parliamentary control over the executive.

Decree Legislation. All this was a fitting prelude to action taken a month later when the Head of the Government, operating through the Council of Ministers, was given *carte blanche* to issue executive decree-laws on almost every subject theretofore committed to the legislative discretion of Parliament. Only financial legislation and legislation affecting local government, educational institutions, and the courts is expressly excluded from

[1] Cf. H. W. Schneider and S. B. Clough, *Making Fascists* (Chicago, 1929), pp. 134-139.

[2] See p. 631.

[3] Law of Dec. 24, 1925, no. 2263, *G. U.*, Dec. 29, 1925, no. 301, p. 5067.

the purview of this authority. The decree power is limited by the requirement that it shall be used only in case of urgent necessity. Once enacted, moreover, the decree-laws must be submitted to Parliament for ratification; otherwise they lose their legal effect. Submission must take place not later than the third successive session of Parliament following the issuance of the decree. Parliament may technically annul the decree; moreover, if Parliament fails to act upon the decree-law within two years after its submission, it is considered to have lapsed.[1] These decree-laws have become the normal form of legislation in Fascist Italy. Mussolini and his Ministers issue them on almost any subject that claims their attention, having little scruple for the urgency requirement. Since no court can pass upon that question, the requirement must be regarded as satisfied if the Head and the Ministers formally assert that the decree-law is necessary. Nor has the Government been too careful to observe even the requirement that decrees be submitted to Parliament before the end of the third session following the decree's promulgation; failure to observe this requirement, however, has apparently not always invalidated the decree.[2]

Decline of Parliamentary Legislative Activity. Deprived of its essential prerogatives, the Italian Parliament has not played a very imposing role during the past dozen years. Although it has continued to meet regularly, indeed frequently,[3] contrasting sharply in that respect with Hitler's Reichstag in Germany, it has become a mere pantomime. In the nine years from April, 1929, to the same month in 1938, some 4278 projects of law (*disegni di legge*) were presented in the Chamber of Deputies, most of which were either initiated in, or later presented to the Senate. Of this total only 16 originated with private members of the Chamber; all of the remainder were presented by the Head of the Government. Of those presented by the Head, 4200 were approved; the rest were either withdrawn, or allowed to expire as projects of law or left pending in committee; apparently none was disapproved. Of the 16 privately initiated bills, six were approved and the remainder withdrawn or allowed to expire.[4]

[1] Law of Jan. 31, 1926, no. 100, especially art. 3, *G. U.*, Feb. 1, 1926, no. 25, p. 426.

[2] Ferrari, *op. cit.*, p. 115; see also H. A. Steiner, *Government in Fascist Italy* (New York, 1938), p. 71 (n. 1).

[3] From Apr. 1929 to Jan. 1937, the Chamber had 326 public sittings, the Senate 286. *Annuario statistico italiano* (1937), 293.

[4] These statistics compiled from the *Annuario statistico italiano* (1937), 293, and the *B. P.*, XII (Apr. 1938), no. 1.

It need hardly be added that the grist of Government bills was made up largely of proposals to convert executive decree-laws into formal law. Placing its stamp of approval upon such measures has become Parliament's chief legislative function.[1]

Parliament's Critical Functions. Efforts at criticism and inquiry were as innocuous as the legislative activity. In the Chamber between April, 1929, and January, 1937, some four interpellations were conducted, some 286 oral and written questions answered, and one motion presented and approved. In the same period in the Senate five interpellations were held and some 80 oral and written questions answered.[2] Inasmuch as the office of the Head of the Government formally examined and approved all these parliamentary actions before they were proceeded with, it is safe to assume that they contained nothing embarrassing to the Government. As the student well knows, procedures designed ostensibly for parliamentary criticism and inquiry can also be used to air the views of the Government and to vindicate its policy.

Parliamentary Reconstruction: The Senate. Having transformed the functions of Parliament, Fascism desired also to remodel that institution. This desire, however, did not extend to the Senate, or upper chamber of Parliament. That body had always enjoyed greater respect from the Fascists than the lower chamber because of the dignity and prestige of its membership, the relative lack of partisanship in its ranks, and the tolerance it had shown their movement in its earlier stages. A more important explanation for the lack of Fascist reforming zeal in the case of the Senate is to be discovered in the method by which the Chamber's membership is recruited. As pointed out earlier,[3] this method is not "electionism," so despicable in Fascist eyes, but royal selection from 21 social, cultural, and economic categories, a method of which Fascism has always approved. Fascism approves of this method of selection all the more emphatically because it means in fact that the Fascist leaders of the Government, and particularly *il Duce,* appoint the Senators. Since there is no limit upon the number of Senators who may be appointed

[1] Such measures go to a special commission on conversion. In the four years from 1934 to 1938 the Senate commission on conversion considered 1252 proposals to convert decree law into formal law, *B. P.*, XII (Apr. 1938), no. 1. In the session of the 30th legislature extending from March 23 to July 25, 1939, over 200 decree laws, some dating from 1937, were converted into law, see *Bollettino delle Assemblee Legislative,* series 2, XIII (July, 1939), pp. 279-283.

[2] *Annuario statistico italiano* (1937), 293.

[3] See p. 580.

at any one time, it did not take the regime long to bring the majority of the upper chamber into line. Nature, moreover, has helped the Fascists out; for senators being elderly men (the minimum age is 40 years, except in the case of princes of the royal blood, who become voting members at 25), the death rate is abnormally high. In the five years between 1932 and 1937, 106 incumbent senators died; and during the same period the Fascist Government appointed 135 new ones.[1] These appointments had been preceded by some 150 more in the period between 1923 and 1929. The membership of the Senate is now (1939) about 400; and except for a half dozen dissidents, some of whom are exiles from their native land, the complexion of the upper chamber is safely Fascist indeed.

Reconstruction of the Chamber of Deputies. Restrained in the case of the Senate, the Fascist desire to remodel Parliament has had full rein in the case of the Chamber of Deputies. Such zeal for change has been displayed that, in 1938, it was abolished and an entirely new Chamber constituted in its stead. The process leading to this final step was a lengthy and rather complicated one; and since it illustrates rather well the evolution of Fascist constitutional thought, it may be briefly reviewed.

The outlawry of the Aventine secessionists in 1925 [2] had left in the Chamber but the rump of Fascist deputies elected under the Acerbo electoral law of 1924. These, together with such Aventinists as decided to come over to Fascism, continued to operate as a Chamber from 1925 until Parliament's existing five-year mandate expired in 1929. One year before the expiration of the mandate, the regime proceeded to a general reconstruction of the Chamber. The geographical constituencies and party lists from which the Deputies had formerly been chosen, being no longer appropriate in a one-party State, were abolished. In their stead a single national list of 400 deputies was provided for. For this list 1000 nominees were furnished by the Fascist Syndical Confederations [3] and other recognized Fascist bodies with "cultural, moral, or educational" objectives. The purpose of the nominations was to reflect occupational and functional interests, thereby giving to the proposed new Chamber a "corporate" complexion. The actual designation of the national list of 400 depu-

[1] *Annuario statistico italiano* (1937), 293.
[2] See p. 621.
[3] See p. 679 for a description of these bodies.

ties rested with the Fascist Grand Council, the governing organ of the Fascist Party, which was to draw them mainly but not exclusively from the list of 1000 "functional" nominees.[1] The list of deputies, thus compiled, was then to be submitted for popular approval in a plebiscite in which all Italian male citizens, 21 years of age or over, were qualified to vote provided they fulfilled one or more of the following four conditions: (1) paid dues to a Fascist syndicate or union; (2) paid a minimum of 100 lire in direct taxes or received an annual minimum income of 500 lire from government obligations; (3) served as a salaried public official; or (4) served as a member of the clergy.[2] The plebiscite permitted the voter simply to endorse or to reject the official slate, the Government itself providing each voter with an official ballot paper, either one stamped with the national colors for an affirmative vote or a plain ballot for a negative vote.[3] The plebiscite thus projected gave the Fascist Government the dubious honor of initiating this institution among contemporary dictatorships.

The Plebiscites. Two Chambers, one beginning operations in 1929 and the second in 1934, were constituted by this novel process. Needless to say the attendant plebiscites were overwhelmingly favorable to the official lists of 400 deputies which the Fascist Grand Council compiled in each instance. More than eight and one-half million of the nine and one-half million voters registered cast a ballot in the first of the plebiscites; and little more than one and one-half per cent of those voting rejected the Grand Council's list. In the second plebiscite somewhat more than ten million of the ten and one-half million registered voters participated and the negative ballots on this occasion were less than one-fifth of one per cent of the total.[4] There is, of course, no way of determining what proportion of the Government majority in each of these cases is to be respectively attributed to the spontaneous enthusiasm of the voter, to occult or violent forms of intimidation, or to official propaganda. As Professor Spencer

1 The Grand Council was authorized to go outside the list of 1000 nominees in order to include persons eminent in the fields of art, letters, science, politics, and arms. For the list of nominees as distributed among the various bodies entitled to make them, in the 1929 election, see H. W. Schneider, *The Fascist Government of Italy* (New York, 1936), p. 55.

2 Male citizens between 18 and 21 could also qualify under these conditions provided they were married and had children.

3 For this electoral law see law of May 17, 1928, no. 1019, *G. U.*, May 21, 1928, no. 118, pp. 2150-2152.

4 *Annuario statistico italiano* (1937), 294.

has said, the preponderance of affirmative votes in Fascist plebiscites is "ominously similar" to the preponderance which Mussolini's great mentor, Bonaparte, enjoyed in 1802 when he asked the French people whether they would have him as Consul for Life.[1] If the results which mentor and pupil obtained were so similar, the methods they employed were probably not dissimilar. However obtained, the plebiscites should have been highly gratifying to Fascism; not only did they provide a formal endorsement of the regime, but they resulted in returning a Chamber of Deputies as loyally and zealously Fascist as could have been wished for.

The Chamber Abolished. Still the Fascists were not satisfied. The very name "Chamber of Deputies" irked their political susceptibilities. Signor Mussolini said it smacked too much of the despised ideas of democracy and liberalism; and he rarely missed an opportunity to voice a wish that the Chamber might be interred with such shibboleths. The growth of the corporate structure after 1934 and the increasingly intimate connection between the party and the Government also called for a Parliament in which these two newer forces in Fascist constitutional life might have more effective expression. Consequently in November, 1936, the Grand Council appointed a committee of five of its members, headed by the late Count Costanzo Ciano, to elaborate a proposal for an entirely new chamber. Its proposal, as modified by the Head of the Government, was accepted by the Grand Council on October 7, 1938; and on December 14th, in one of the most extraordinary sessions of any contemporary parliamentary assembly, the Chamber accepted the plan for its substitute "by acclamation" and enthusiastically committed suicide. The Deputies' action was ratified by the Senate five days later.[2]

The Chamber of Fasces and Corporations. The new lower chamber of Parliament, which met for the first time on March 23, 1939, is known as the Chamber of Fasces and Corporations (*Camera dei Fasci e delle Corporazione*).[3] Its membership called National Councilors and totaling somewhat over 600, is drawn from three existing bodies, the Grand Council of Fascism, the National Council of the Fascist Party, and the National Council

[1] See his *Government and Politics of Italy* (Yonkers, 1932), p. 180.

[2] Law of Jan. 19, 1939, no. 129, *G. U.*, Feb. 14, 1939, no. 37; text and discussion may also be found in *B. P.*, XII (Dec. 1938), pp. 71-80; an account of the suicide session is to be found in the *New York Times*, Dec. 15, 1938.

[3] For the 21 articles of the law creating the chamber see *B. P.*, XII (Dec. 1938), pp. 76-80.

of Corporations.[1] Persons designated to serve from these bodies must be at least 25 years of age [2] and they may not be members of the Senate or of the Italian Academy. Since the Council of Corporations is by far the largest of these three bodies, its membership is the most important constituent in the composition of the new Chamber. The tenure of a National Councilor in the new Chamber lasts as long as his membership in the constituent body from which he has been designated to serve; his service is thus of indefinite duration. Councilors retire and new ones appear at irregular intervals; and the Chamber of Fasces and Corporations, unlike the former Chamber of Deputies but like the Senate, is never renewed *in toto*. Legislative periods are fixed arbitrarily by the Head of the Government. It need hardly be added that no popular electoral or plebiscitary activity of any sort enters into the constitution of this new organ of government; Fascism has finally abolished elections.

Changes in the Legislative Function. In establishing the new Chamber, the Fascist leaders seized the opportunity to transform Parliament into an even more glorious legislative rubber stamp than it had previously been. Henceforth plenary sessions of the two Chambers are to be virtually dispensed with. Such sessions are to be called only to secure action upon the final draft of fiscal or constitutional legislation or upon such measures as the Government chooses to submit to a full vote of Parliament. The great bulk of legislative measures are to be submitted by the Government directly to parallel standing committees of the two Chambers which are expected to discuss and approve them within a thirty-day period. At the end of that time the measures are to be sent to the Head of the Government who is to promulgate them as law according to the usual forms. Parliamentary legislation, such as it was under Fascism, has thus become legislation by parliamentary standing committees. In case the parallel standing committees of the Chamber and Senate fail to approve a measure within the prescribed thirty-day period, even this legislative procedure may be dispensed with. In such a case the Government may resort to its decree-law power, conferred upon it in 1926,[3] to give effect to a measure and await conversion of its decree into law at a subsequent period. This decree-law power is also to be used when an emergency has arisen which, in the

[1] For these various bodies see pp. 661, 694.
[2] The minimum age qualifying for service in the Chamber of Deputies was 30.
[3] See p. 637.

opinion of the Head of the Government, renders it impractical or dangerous to await formal action by the parliamentary committees.[1]

The Committees. The presidents of the two Chambers appoint the standing committees and allocate legislative measures among them. Thirteen committees were organized during the first session of the Chamber of Fasces and Corporations with the following titles: Foreign Affairs, Italian Africa, Justice, Defense Forces, Education, Foreign Commerce and Exchange, Internal Affairs, Finance, Public Works and Communications, Agriculture, Industry, Popular Culture, and Professions and Arts. The titles closely resemble the established nomenclature of the various ministries, a fact which makes all the more obvious the real role allotted to each committee, which is that of serving as a legislative advisory organ for some member of the Government. Each committee consists of from 24 to 40 members, depending upon the relative importance of the subject over which it has jurisdiction. The Senate manages to get along with only eight committees, several of them exercising a dual jurisdiction. Thus the Senate Committee on Internal Affairs is also the Committee on Judicial Legislation, and the Committee on Education considers matters relating to Propaganda and "Popular Culture." A standing committee of the Senate for which the Chamber appears to have no duplicate is the Committee on Corporative Economy and Autarchy. Both Chambers also create special committees from time to time.[2]

Courts and the Law

Changes Wrought by Fascism. Fascism has made changes in the Italian judiciary appropriate to its tenets and political requirements. At an early date the regime took care to rid itself of such members of the bench as it considered "politically untrustworthy." This was accomplished by legislation to purify the civil service, enacted between 1923 and 1925 and expressly ex-

[1] For these changes in the legislative function see arts. 15-18 of the law on Chamber of Fasces and Corporations already cited. The operation of this system of committee law-making is illustrated in the *Bollettino delle Assemblee Legislative,* series 2, XIII (July, 1939), pp. 227-278. An excellent description of these various changes may be found in H. A. Steiner, "Fascist Italy's New Legislative System," *Amer. Polit. Sci. Rev.,* XXXIII (June, 1939), 456-465.

[2] The official list of parliamentary committees appears in the *Bollettino delle Assemblee Legislative,* series 2, XIII (July, 1939), p. 227. They are also described in *Outline Studies,* series II, no. 4 (Italian Library of Information, New York, March, 1939), p. 25.

tended to the judges.[1] Traditionally judges in Italy were regarded as being outside the ranks of the regular functionaries of the State; with that distinction removed, their guarantee of tenure becomes that of regular civil servants and their independence of the executive power is consequently seriously jeopardized. Two other developments of the regime have gravely interfered with judicial independence. The first was the creation, in 1926, of the Special Tribunal for the Defense of the State before which are tried persons accused of political offenses. The magistracy of this court consists of Militia and army officers rather than of members of the bench, and its procedure is that of a court-martial. The other development affecting injuriously the status of the courts is to be discovered in the growth of summary administrative process by which police and officials may deprive citizens of their personal liberty without resorting to the courts for authorization. Both of these developments will be treated at length on subsequent pages.[2] It may be added that since the purge of the bench in 1926, little interference with its personnel has been manifested. In principle, tenure is guaranteed during good behavior after a three-year probationary period. Power of appointment and promotion from within the ranks rests with the Minister of Justice, in whom indeed is centered general supervision over the judicial system. Like the French, the Italian bench is regarded as offering a life career.

The Lower Courts. The tribunal of lowest grade in the judicial hierarchy is the local office of conciliation, or people's court. There are upwards of 7500 of these bodies in Italy today, one or more being found in each commune. The judge (*conciliatore*) of this tribunal, who is not regarded as a professional member of the bench, is appointed by the President of the Court of Appeals. It is the function of these courts to settle petty civil disputes involving not more than 400 lire. Above them stand the courts of the praetor (*pretore*) or justice of the peace, of which there are some 1300. They entertain appeals from the conciliation tribunals; in addition they have original jurisdiction in civil cases involving not more than 5000 lire and in criminal cases involving fines of less than 5000 lire or imprisonment for periods of less than three years. In each provincial capital and in some of the larger

[1] See especially law of Dec. 24, 1925, no. 2300, *G. U.*, Jan. 4, 1926, no. 2, p. 11. The only special consideration given a judge, in case removal for cause is contemplated, is the requirement that his case shall be considered by the full Council of Ministers.

[2] See pp. 720 and 721.

cities as well there are to be found the Tribunals (*Tribunali*), 138 in number. They occupy the first level in the ranks of the higher courts, appropriate sections of each tribunal entertaining original jurisdiction in practically all civil cases, and in all criminal cases except the most serious, not tried originally in the courts of inferior grade. They also entertain appeals from the praetor's court.

The Courts of Appeal. Courts of Appeal (*Corti d'Appello*) exist in each of 19 geographic regions or compartments. Since most of the regions have more than one such court, their total number in the kingdom is 28. Most of the civil appeals from the lower courts go to this tribunal and some civil cases of great importance may be originated in it. A special section of the Appellate Court, known as the Court of Assize (*Corte d'Assise*), sits as the highest criminal court of first instance, trying all cases which may involve the death penalty or life imprisonment. The Court of Assize includes one Appellate judge, who sits as president, and five associate judges known as assessors (*assessori*). The latter are laymen, selected by the Minister of Justice, from outstanding citizens of the vicinage. The assessors are a substitute for the jury of parliamentary days which Fascism has abolished. A Court of Assize sits at intervals in practically every province. The Fascist regime has erected two other special courts out of sections of the Court of Appeal. The first of these is the Tribunal for Minors, recently formed, which consists of one Appellate judge and a lay expert or assessor. Its activity is described by its title. The second of these newer tribunals is the so-called Labor Court (*Magistratura del Lavoro*), established in 1926 to provide judicial settlement of economic disputes between the employee and employer syndicates. Three judges of the Court of Appeal and two lay assessors make up the Labor Court. Further attention will be devoted to this court on a subsequent page.[1]

Court of Cassation. The highest rung in the judicial ladder is occupied by the Court of Cassation (*Corte di Cassazione*) at Rome. It is comparable to the tribunal of the same name in France or, possibly, to the Supreme Court of the United States. Its various sections, of which there are three for civil cases and an equal number for criminal cases, constitute tribunals of last resort for appeals from the lower courts. Appeal is restricted to cases where procedural or jurisdictional errors are alleged or where a defendant claims there has been an abuse of discretion. The high court may void or uphold judgments or require new trials. Each

[1] See p. 681.

of its six sections is composed of seven magistrates, the president of the entire tribunal usually being the magistrate with the longest record of service. Prior to the advent of Fascism there were actually five Courts of Cassation, all of equal authority, located at Turin, Florence, Naples, Rome and Palermo, respectively. Their consolidation in 1923 into a single court at Rome is one of the more excellent of the Fascist judicial reforms.

The New Legal Codes. Like all major revolutionary movements, Fascism has sought expression in new legal norms and in a recodification of existing law. New criminal codes, largely the work of the late Alfredo Rocco, quondam Fascist Minister of Justice, were elaborated and put into operation in 1932.[1] New civil codes are also being prepared and portions have already been promulgated.[2] Fascist commentators take great pride in the introduction into the new criminal codes of what they consider to be some of the latest scientific developments in criminology as well as in the substitution of the "social principle" of law for the individualism which they claim has colored codes since the French Revolution. A noteworthy illustration of the "social principle" is to be found in a reform already commented upon, viz., the abolition of the jury which, apparently inspired originally by English models, had been attached to the Court of Assize. The same principle is further illustrated by the emphasis upon a more inquisitorial type of criminal procedure, by the imposition of severer penalties, and by the denial of the privilege of suing magistrates, procurators, or police in cases where citizens have been wrongfully accused or suffered a miscarriage of justice. Appeals have also been restricted. Substantively the new codes are distinguished by the re-introduction of the death penalty, the absence of which liberal Italy used to regard as a sign of progress; by an extensive regulation of crimes of an economic nature, a reflection of syndicalist and corporative developments; by greater legal protection for the marriage tie; and by the definition of various types of "political crime," most of which have been taken over from decrees promulgated just after Fascism assumed power.

Administrative Courts. Like other Continental states, Italy normally does not allow suits brought by private citizens, contesting the validity of administrative action, to be brought into the regular courts. Such suits, when the law authorizes them,

[1] An English translation of the new penal codes as approved by royal decree on October 19, 1930, is published by His Majesty's Stationery Office (London, 1931).

[2] See summary of royal decree of Dec. 12, 1938, no. 1852 in the *Bollettino delle Assemblee Legislative,* series 2, XIII (July, 1939), pp. 94-95.

must be brought to the tribunals dispensing what may be called "administrative justice." The Italian administrative courts were elaborated at the end of the last century during the prime ministership of Francesco Crispi. As indicated elsewhere,[1] the Provincial Administrative Junta *(Giunta)* serves as such a court in each province. Most of the decisions of the Juntas are reviewable by the Council of State at Rome which also has some original jurisdiction over administrative contests. The Council of State thus serves as the high court of the system. The extended application of the principle of administrative finality to many of the decisions of public authorities, combined with the requirement, in many instances, that decisions of inferior officials shall be reviewed only by their hierarchical superiors, has deprived these tribunals of much potential jurisdiction under Fascism. The tribunals themselves, moreover, have lost whatever judicial independence they once had. The Provincial Junta, once composed primarily of representatives of the elected council of the province, is now made up of four officials and four party representatives in addition to the prefect. In parliamentary days the Council of State used to have a fourth section specifically assigned to the judging of administrative controversies between citizens and officials. Its nine councilors enjoyed some immunities from ministerial control not granted to the councilors of the other sections, whose principal duty was to give advice to the Government on legal matters and settle controversies between administrative organs. The Fascist Government has abolished the fourth section, thereby eliminating the distinction between its councilors and those of the other sections, and identifying the judicial functions of the Council of State with its normal administrative duties. In August, 1931, moreover, the Council of State was attached to the office of the Head of the Government.

Local Government and Administration

Fascist Reform of Local Government. While Fascism was centralizing the power of the national government in the executive, changes appropriate to its authoritarian conception of public power were also being made in the local political and administrative areas. Fascist influence in those areas had been felt even before the March on Rome, the Blackshirt squads having ousted more than one predominantly Socialist and Populist communal council and caused many an elected syndic, or mayor, of a

[1] See p. 654.

commune to resign his office under duress. After Mussolini's appointment as Prime Minister, extraordinary commissioners were despatched from Rome to many of the communes; these often suspended the regularly elected administrations and exercised plenary power themselves. In the provinces the prefects of the old regime quickly transferred their affections to their new masters in the Interior Ministry at Rome. If they did not do so, they were harassed by local Fascist political bosses and eventually dismissed or transferred. Beginning in 1926 thoroughgoing reforms of local government were undertaken. First came the laws on communal administration in February and September, 1926; [1] two years later the internal government of the provinces was modified.[2] Finally in March, 1934, a comprehensive royal decree modified previous changes and made extensive alterations in the national administrative authority of the prefect.[3] The net result has been a complete transformation of Italian local government in line with Fascist models.[4]

Local Administrative Areas. For the local exercise of national authority and for local governmental purposes, the kingdom continues to be subdivided into provinces and communes. Of the former there are now 98, that number having been reached in 1937 when the Libyan seacoast areas of Tripoli, Misurati, Derna, and Bengasi were raised to provincial dignity. The number of communes has varied considerably since 1922, as former ones were combined and newer ones were created out of reclaimed lands. The most recent tabulation establishes their number at 7307. For the realization of specific services and for mutually beneficial improvements, unions between communes, between communes and provinces, and between provinces, may be authorized.[5] Such unions, however, do not affect existing boundaries. Although not a legally recognized area of local administration, mention may also be made of the compartments, of which there are now 19. They correspond roughly to historical political divi-

1 Decree law of Feb. 4, 1926, no. 237, *B. P.*, I (June, 1927), p. 93; decree law of Sept. 3, 1926, no. 1910, *B. P.*, I (June, 1927), p. 105.

2 Law of Dec. 27, 1928, no. 2962, *B. P.*, II (Dec. 1928), p. 138, and law of same date, no. 3123, *B. P.*, II (Dec. 1928), p. 147.

3 Decree of Mar. 3, 1934, no. 383, *B. P.*, VIII (Apr. 1934), pp. 27 ff., and *G. U.*, Mar. 17, 1934, Supp. no. 65. This action was taken in conformity with parliamentary authorization of Mar. 31, 1932, no. 359, *B. P.*, VI (Apr. 1932), p. 65.

4 For a brief review of this legislation see Carlo Rossi, "Local Government in Italy under Fascism," *Amer. Polit. Sci. Rev.*, XXIX (Aug. 1935), 658. See also section on Italian local government by H. A. Steiner in Anderson and others, *op. cit.*, pp. 307 ff.

5 Arts. 156 and 169 of the decree of Mar. 3, 1934, previously cited.

sions, such as Piedmont, Tuscany, and Liguria. Compartments provide territorial boundaries for the jurisdiction of the Appellate Courts; they also serve as convenient geographic classifications of provinces for legislative purposes. A fourth local area, traditionally of some importance, the *circondario,* which corresponded to the French *arrondissement,* was abolished by the Fascists in 1927.

Government of the Commune: the Podestà. In the commune Fascism has set up an official known as the *podestà.* He replaces the communal council and elected syndic of parliamentary days. *Podestà* came into prominence in northern Italian cities in the twelfth century as representatives of Hohenstaufen imperial interests; subsequently they became the prevailing municipal authority, only to die out in the sixteenth century.[1] The Fascist *podestà* has prerogatives which recall those of his medieval namesake. He represents the commune publicly and before the courts, formulates and promulgates local acts and ordinances, negotiates contracts, supervises the commune's administrative services, administers the commune's property, and prepares the local tax registers; in short the government and authority of the commune is centered in his person. In addition he serves as a local officer of the national Government, supervising the gathering of vital statistics, keeping army registers, maintaining order and security, and advising national authorities of threats to the public peace. A limited ordinance power is committed to him for the discharge of these functions.[2] *Podestà* are appointed by royal decree for a term of four years; in practice, however, their tenure is of indefinite duration.[3] Most of the larger communes, and those which are politically important, have a council (*consulta*) with a membership ranging from 10 to 40 persons. Nominations for the council are made by local syndical associations and appointments are made by the prefect of the province. In the larger communes the *podestà* must seek the advice of his council upon certain fiscal and other matters; but the *podestà* need not follow the council's advice, the law merely requiring that he state that his action is taken against the council's advice should such be the case. The Fascist communal council is merely a body with limited advisory functions; in no sense is it a local legislative body as was the council of communal governments of parliamentary days.

[1] W. F. Butler, *The Lombard Communes* (London, 1906).
[2] Arts. 52-54 of the decree of Mar. 3, 1934, previously cited.
[3] For a good description of the *podestà,* see L. K. Born, "What Is the Podestà?" *Amer. Polit. Sci. Rev.,* XXI (Nov. 1927), 863 ff.

Governorship of Rome. The communal governmental organization applies uniformly throughout Italy except in the case of the city of Rome. There an administration has been established known as the Governorship (*Governatorato*) of Rome. Instead of being called a *podestà,* the head of the city's government is known as the Governor of Rome. His appointment, moreover, does not come directly from the Minister of the Interior as does the *podestà's,* but rather from the Council of Ministers, the Minister of the Interior making the nomination. There is also a Council of Rome consisting of 12 members; relations betwen it and the Governor are much like those existing between council and *podestà* in any commune. The position of Governor of Rome is regarded as a high honor, those filling it being graded next to the very highest rank in the classified service of the Ministry of the Interior. The position has generally been filled by one of Fascism's chief luminaries. For his acts the Governor is not responsible to the prefect, as a *podestà* would be, but to the Minister of the Interior. In all other essentials the position of the Governor of Rome is like that of an ordinary *podestà,* whose powers the Governor is authorized to wield. The national Government, however, may and does intrust responsibilities to the Governorship which are normally not given to a commune, such as control of all police, local and national, within the area of the city. Powers normally exercised by provincial authorities may also be conferred upon the Governorship.[1] The primary purpose of this special dispensation for the city of Rome was to raise its dignity as the nation's cultural and political center; there was also the desire to provide such powers of government, in addition to those normally committed to a commune, as might be required by a community which is at once the nation's metropolis and seat of government. Fascism takes great pride in the social and physical advances made in Rome since the imposition of this new system of government.[2]

Provincial Government: President and Rectory. Local governmental powers within each of the 98 provinces have been confided to a provincial president (*preside*) and a council called the rectory (*rettorato*). The latter replaces the popularly elected provincial council of parliamentary days. The president's term is for four years although, like the *podestà,* his tenure is practically

[1] For the legal regulations describing the Governorship, see decree of Mar. 3, 1934, previously cited, arts. 344-426.

[2] See article entitled "The Transformation and Development of Rome" by the former Governor, Francesco Boncompagni Ludovisi, in *What Is Fascism and Why?,* T. Sillani, ed. (London, 1931), pp. 174 ff.

indefinite. The members of the rectory, who number from four to eight, depending upon the population of the province, also have indefinite tenure although, for grave reasons, the entire body may be suspended by the prefect or dissolved by the Minister of the Interior. Both president and rectors are appointed by the Minister of the Interior. The position of the president in the administration of provincial affairs is not dissimilar to the role of the *podestà* in the commune. The president represents the provincial administration, controls the provincial services and their personnel, and prepares and administers the budget. But the government of the province is not as personalized as is that of the commune. Unlike the communal council the provincial rectory is a body with at least formal authority. In law the president and the rectory together make up the "provincial administration"; and in the biennial sessions of the rectory, over which the president presides, that body must formally pass upon the budget, provincial taxes and loans, upon proposed changes in the organization of provincial services, upon the construction of provincial public works, and upon a host of other subjects. Initiative on such questions in the sessions of the rectory rests with the prefect, the president and the members of the rectory, in that order.[1]

The Prefect. By all odds the most important functionaries in the local jurisdictions of Italian government are the prefects of the provinces. Few officials in Fascist Italy, national or local, are as important in maintaining the power and prestige of the Government throughout the length and breadth of the kingdom as these officials attached to the Ministry of the Interior. They are the 98 "tyrants" of Fascist Italy, even as the intendants of Richelieu were the 30 "tyrants" of Bourbon France. The law fittingly describes the prefect as "the highest authority of the State in the province," as the "direct representative of the executive power," and as the initiator, co-ordinator, and director of all provincial activity.[2] These phrases identify in a general way the prefect's three most important prerogatives. They are: (1) supervision over local government; (2) supervision over the local operations of national services; and (3) the exercise of various personal powers chiefly for the maintenance of peace and order. Among the first of these prerogatives is embraced the prefect's power to investigate the activities of the legally autonomous governments of the

[1] Arts. 111-154 of decree of Mar. 3, 1934, previously cited.
[2] Art. 19 of the decree of Mar. 3, 1934, previously cited.

province and the commune; to suspend the president and rectory of a province and the *podestà* of a commune for irregularities; to review and veto acts of these authorities if necessary; to compel their respective administrations to take action where the law requires it; and to supersede local authority where that appears necessary. The second prerogative entitles the prefect to supervise the local officials of various national ministries and to coordinate their activity with the work of the autonomous local administrations, provincial and communal. For this purpose he must maintain contact with ministries other than the one to which he owes direct allegiance. The only national services whose local manifestations fall outside his jurisdiction are those connected with justice, the defense services and the railways. Under his third prerogative the prefect exercises many powers assigned to him directly by law. All the intimate controls over personal liberty which Fascism has enacted for political security are administered by him or in his name. He is also given discretionary power to maintain public order and promote public security and for this purpose may make use of police and Militia forces. Finally he may issue emergency decrees having the force of law if considerations of public health or safety demand.

His Close Contact with Central Authorities. In view of the prefect's strategic importance, it is not surprising that the central authorities take an unusual interest in his position and carefully supervise his activity. Telegraphic advices and instructions from Rome are regular occurrences. As Minister of the Interior, Mussolini early inaugurated the practice of having the prefects come to Rome at intervals, there to receive instructions as to national policy and its local ramifications. For a time after Fascism came to power the prefect's authority was often usurped by the *federale,* or provincial secretary of the Fascist Party. Nowadays this is largely prevented by the increased centralization of authority within the party and by the proved willingness of Mussolini, as Minister of the Interior, to stand with the prefects against any of the party agents.[1] In Giolitti's day, the prefect used to render the national authorities highly important "political services" particularly at election time. "Political services," such as they are in a country without elections, have long since been transferred to the party *federale;* nevertheless the central authorities still regard the prefect's office as the chief source of information about sub-

[1] See Mussolini's circular letter to the prefects of Jan. 5, 1927, *B. P.,* II (Mar. 1928), p. 60.

versive activities which might endanger the regime. The prefect is still the central government's "political watchdog."

Auxiliary Agencies Attached to Prefect's Office. Mention must also be made of certain auxiliary agencies attached to the prefect's office. The first of these is the Prefectoral Council, consisting of two members and presided over by the prefect himself. Its chief duty is to render the prefect advice when he asks for it or when the law requires it; the prefect, however, need not heed the advice.[1] The second body of importance is the prefectoral inspection service, attached to the Ministry of the Interior but superintended by the prefect. It is his chief agency for inquiring into the administrations of provinces and communes and detecting irregularities therein. Finally there is the Provincial Administrative Junta (*Giunta*) consisting of the prefect, who presides over it, the two prefectoral councilors, two other provincial functionaries designated *ex officio,* and four "experts" nominated by the Secretary of the Fascist Party and appointed by the Minister of the Interior.[2] The Administrative Junta is the body which determines the formal legality of acts of local governmental authorities such as president and *podestà.* It is also, as previously indicated, the tribunal of first instance in the system of administrative courts, being inferior in this respect to the Council of State at Rome. Membership in the Junta of Fascist Party representatives, although helping to co-ordinate party interests with the actions of local governmental authorities, has materially reduced the judicial independence which this body enjoyed in parliamentary days.

Increased Central Control. Of fundamental significance in this vast reform of Italian local government is the emphasis placed upon the principle of administrative control by central and regional authorities. This is evidenced, first, by the abolition of all forms of electoral participation; secondly, by the subordination of the traditionally independent commune to the prefect, Provincial Junta and Minister of the Interior; and thirdly, by the assimilation of local functionaries to the rolls of the national bureaucracy, even the communal *podestà* and the communal secretary being thus absorbed. Centralization has also been the order of the day in the case of the local finances. The traditional powers of the Provincial Junta to pass upon communal and provincial budgets has been enlarged. Its decisions setting aside proposed

[1] Arts. 23-24 of the decree of Mar. 3, 1934, previously cited.
[2] Art. 25 of the decree of Mar. 3, 1934, previously cited.

expenditures may be appealed to the Ministers of Finance and the Interior who, in judging such appeals, are aided by a Central Commission for Local Finance composed of a variety of local and national officials. In some cases this Central Commission has actually taken over the financial affairs of a commune and prepared its budget.[1]

Advantages and Disadvantages. Much of this centralization, particularly that relating to local finances, has undoubtedly been necessary. Definite administrative advantages, moreover, have resulted. Local administration has become more flexible; inexperienced officials, formerly introduced by the electoral route, are now avoided; and friction between local, regional, and national authorities has been largely overcome. On the other hand, the political expediency of what has been done is dubious. That observation applies particularly to the virtually complete destruction of popular participation. Deprived of all voice in local government, or nearly so, the initiative and sense of responsibility of the local populace must inevitably be blunted. Furthermore, in destroying electoral representation in local affairs, the Fascists have denied themselves one of the best instruments for allaying the friction that is more than likely to arise between the residents of a local jurisdiction and the national bureaucrats sent to govern them.

[1] For the work of this Commission see section on local government in Italy by H. A. Steiner, in Anderson and others, *op. cit.*, p. 334.

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CHAPTER IV. THE NATIONAL FASCIST PARTY

Party and Regime

Fascism's Reliance upon the Party. Students acquainted with the processes of parliamentary governments, such as those in France and Great Britain, are well aware of the important role played in them by political parties. In those states it is the parties which offer leadership and political initiative, unify and coordinate political activity, and generally provide the dynamics of the political mechanism. If this be true of the parties of a parliamentary State, it is equally true of the single party which is allowed to exist in Fascist Italy, the *Partito Nazionale Fascista.* The party's leaders are the aides-de-camp of the Italian dictator. The party's organs are the wheels within the wheels of the government; indeed, as this chapter will show, the party organs have in many cases become the wheels of the governmental mechanism itself. The rank and file of the party are the regime's missionaries, spreading its gospel throughout the land; they are the inspirers of loyalty and the detectors of heresy. To maintain itself the Fascist dictatorship may rely heavily for support upon the bureaucracy of the State, upon the police and upon the State's public forces; ultimately, however, it relies upon the party. That reliance, indeed, is one of the major distinctions between the anatomy of the Fascist dictatorship and the dictatorships of the past.

Early Opinions as to the Party's Position. The party has come to its present status gradually. Immediately after the March on Rome some of the Fascist spokesmen were inclined to disband it or, at best, transform it into a purely honorific body. The *Fasci* and Militia units of which it was composed had been instruments of revolution; with the revolution successful, it was felt these organs had served their purpose. To other spokesmen of the movement the very name of party was offensive. For them it connoted the regime from which Fascism was alleged to have res-

cued Italy, the regime of political liberalism in which various organs called "parties" competed for power. Still other spokesmen distrusted the activities of the leaders of the local units of the party, the "rasses" or provincial "bosses," who, taking affairs into their own hands in their respective domains, often embarrassed national leadership and authority and seriously injured the cause. But these views were not shared by Signor Mussolini and his more influential lieutenants. It was clear to them that the rank and file of an organization which had served the cause of revolution so loyally could not be cavalierly dismissed on the morrow of victory. Such ingratitude would have produced discontent dangerous to the new order. Moreover destruction or attenuation of the party would have removed the one certain source of popular support at a time when the Fascist leaders were by no means certain of their new position in the State. The policy ultimately adopted, therefore, was to knit the party more firmly together, centralize authority in it, and then transform it into an integral feature of the new polity.

Development of Party Centralization. The first step in the process of centralization had already been taken in November, 1921, when the various local *Fasci* were combined to form the national party. Another step in that direction was taken early in 1923 when the party's Grand Council was established and invested with plenary jurisdiction over party organization and policy. In a series of party statutes beginning with the one adopted in September, 1926, elections in the party were gradually abolished. Even the basic units, the local *Fasci,* were denied the right to elect their own leaders. The principle of hierarchy was also introduced, subjecting each inferior administrative or conciliar level in the party structure to the one immediately above it. Thus articulated, authority and responsibility were made to converge upon the national councils of the party and upon the *Duce* whose will and policy became law for the entire organization.[1]

The Party becomes a Public Body. Concomitantly the party became more closely identified with the Government. The party statute of 1926 declared that "Fascism was a militia in the service of the nation." The most recent party statute, adopted in March, 1938, elaborates this formula by stating that the party is a "civil militia under the orders of the *Duce* in the service of the Fascist

[1] The earlier phases of these developments are traced in H. W. Schneider, *Making the Fascist State* (New York, 1928), p. 130.

state." [1] Whatever the formula, not even a constitutional lawyer can doubt that the Fascist Party is now invested with a public character. To give legal emphasis to this status, the party statutes of 1929, 1932, and 1938, following their adoption by the Grand Council, were promulgated as royal decrees and published in the Official Gazette of the kingdom.[2] Italian courts have also declared that the party is an organ of public law and that its officers are public officers.[3]

Party Structure and Organization

Fasci di Combattimento. The constituent units of the party continue to be the local *Fasci di Combattimento* of which the first was organized by Mussolini in the Piazza San Sepolcro in Milan on March 23, 1919. The *Fasci* at present number approximately 7300, or about one for every commune in the kingdom. As already pointed out, hierarchical control within the party has deprived the local *Fascio* of its earlier right to elect its leader. Known as the Political Secretary, he is appointed to his post by his immediate superior, the Secretary of the Provincial Federation of *Fasci,* popularly known as the *federale.* In the execution of his duties the Political Secretary is advised and assisted by a local directorate of five members of the *Fascio,* nominated by himself and appointed by the *federale.* Formal meetings of the *Fascio* are relatively rare; only two need be held annually, one to hear and discuss policy fixed by the party leadership and another to observe the anniversary of the founding of the first *Fascio.* On the other hand the headquarters of the local *Fasci* are very busy places, and quite popular.

Membership Regulations. The local *Fascio* is technically the only gateway to membership in the party. Members are ordinarily recruited from the highest level of the Fascist youth organization, known as the *Giovani Fascisti,* or Young Fascists. These are recommended for membership in some local *Fascio* when they have attained their majority. The ceremony of admission, known as the Fascist levy (*leva fascista*), occurs annually on

[1] Art. I. The statute appears as a decree of Apr. 28, 1938, no. 513, *G. U.,* May 18, 1938, no. 112, pp. 1848-1855. A translation of the somewhat similar statute of 1932 is printed in "Documents on the Fascist Government of Italy" by H. W. Schneider in *Source Book on European Governments,* by W. E. Rappard and others (New York, 1937), Section III, pp. 17 ff.

[2] See decree of Dec. 20, 1929, no. 2137, *G. U.,* Dec. 21, 1929, no. 297, p. 5674; decree of Nov. 17, 1932, no. 1456, *G. U.,* Nov. 21, 1932, no. 268, pp. 5218-5223; and decree of Apr. 28, 1938, already cited.

[3] For these developments, see H. A. Steiner, "The Constitutional Position of the *Partito Nazionale Fascista,*" *Amer. Polit. Sci. Rev.,* XXXI (Apr. 1937), 229 ff.

May 29th, this being one of the fête days of the regime.[1] In addition to these graduates of the youth organizations, who now provide an annual increment of approximately 300,000 new members, the doors of the local *Fasci* are occasionally opened to others as a reward for political services or for other reasons. This has been particularly true since 1932. Although Mussolini frequently reiterates the desire that the party and the nation shall become one, implying that membership should become more popular, the doors of the party are not likely to be opened too wide. Even the rank and file of the party are considered as a select body of Italians, those who must guard the Fascist revolution and provide a reservoir for the directing class of the future. If such ends are to be served, the personnel of the local *Fasci* must continue to be rather carefully selected and not allowed to grow to such proportions as to become politically unwieldy. The total membership of the *Fasci* at present is somewhat over two million.

Disciplinary Regulations. Although the members of the *Fasci* are essentially equal in dignity and status, some distinctions are made. Those Fascists who were present at the founding of the first *Fascio* in Milan are given a certain precedence. Moreover, offices and positions of command can be intrusted only to those who fought for, or assisted in, the revolution or who have joined the *Fasci* via the youth organizations. Newly admitted members must take an oath of personal fealty to the *Duce* and of loyalty to the Fascist revolution.[2] Discipline within the ranks is strict, it being one of the duties of the Political Secretary of the local *Fascio* to observe the political and moral qualities of each member and to insist that discipline be respected. Minor breaches of discipline involve a reprimand or suspension as penalties. Serious breaches may involve withdrawal of the prized *tessera,* or membership card, and ultimately expulsion from the party. All penalties save expulsion may be administered by a provincial disciplinary commission under the orders of the Federal Secretary. Administration of the penalty of expulsion is left to the national officers.

Provincial Federations of Fasci: the Federale. Local *Fasci* are combined into provincial federations. At the head of each

[1] See art. 9 of party statute of Mar. 11, 1938, decree of Apr. 28, 1938, no. 513, *G. U.*, May 18, 1938, no. 112, p. 1852; for a description of the levy see D. S. Piccoli, *The Youth Movement in Italy* (Rome, 1936), pp. 39 ff. An extensive description of the youth organization appears on p. 663.

[2] The oath runs: "In the name of God and of Italy I swear that I will obey the orders of the *Duce* without questioning, that I will serve the cause of the Fascist revolution with all my power and if necessary with my blood."

federation stands the official previously identified as the Federal Secretary or *federale*. As already stated, he appoints the Political Secretaries of the local *Fasci* and advises them as to policy and other matters. In his office are kept all the local membership registers; the *federale* is responsible for keeping the registers up to date and for issuing party cards annually to all members in good standing. He is also presiding officer or a member *ex officio* of practically every auxiliary party organization in the province and advises them as to policy. He maintains essential contacts with members of parliament and other political figures, with representatives of the various syndical associations, and with the police and Militia forces. He is, in brief, the key figure among the regional officials of the party, having somewhat the same relation to the central hierarchy as the prefect has to the central administration of the Government. Indeed the *federale* has in the past often overshadowed the prefect in importance. The *federale's* appointment rests with the *Duce* although the nomination for the position is made by the party's National Secretary. In each provincial federation of *Fasci* there is also a Federal Directorate to advise the *federale;* it is composed of seven persons nominated by the *federale* and appointed by the National Secretary.

The National Secretary. In the most recent statute of the party, its hierarchy of officials is graded according to 12 levels.[1] Occupying the twelfth level at the apex of the hierarchy, indeed its solitary occupant, is the National Secretary of the party. As its rank would imply, this is a position of great importance, its holder serving as the *alter ego* of the *Duce* and as the executive officer of the party's constituent organ, the Grand Council, in exerting control and direction over the entire organization. The National Secretary nominates or appoints all subordinate officials and is authorized to remove them for cause. He supervises the administration of the party's business affairs and has charge of all the graver disciplinary actions against officers or members. Some of the leading figures of the regime have filled the post of National Secretary since 1921, including Michele Bianchi, Roberto Farinacci, Augusto Turati, and Achille Starace. The present National Secretary is Ettore Muti, who took office in October, 1939.

[1] Art. 12 of the party statute of Mar. 11, 1938, previously cited. The more important levels of the hierarchy below the National Secretary are: (1) members of the National Directorate; (2) national inspectors; (3) federal secretaries; (4) members of federal directorates; (5) federal inspectors; (6) political secretaries; (7) members of local directorates.

National Deliberative Organs and the Leader

National Directorate and National Council. For an organization which strongly emphasizes personal leadership, the Fascist Party has an amazing number of national assemblies with more or less deliberative power. One of these is the National Directorate. It consists of the National Secretary, who normally presides over it, of the three Vice-Secretaries of the party, of the party's Administrative Secretary and of several other members, most of them *federali,* appointed by Mussolini on the proposal of the National Secretary.[1] The Directorate meets at party headquarters in the *Palazzo Littorio* in Rome usually once a month on call of the National Secretary. Its most important function is to review the financial and administrative affairs of the party. A second assembly, the National Council, hitherto of relatively little importance, has recently acquired unusual prominence because it has been included as one of the constituent organizations of the new lower house of the Italian Parliament, the Chamber of Fasces and Corporations.[2] Reconstituted to discharge its new role more effectively, it now consists of the National Secretary and other national party officers and the various federal secretaries. Its total membership thus includes about 120 persons. When the National Council is convoked to discuss party matters, the National Secretary issues the call and presides unless superseded in these activities by the *Duce.*[3] A special commission authorizes members of the Council to serve in Parliament.

The Fascist Grand Council. By all odds the most important of the collegial organs of the Fascist Party is its Grand Council (*Gran Consiglio del Fascismo*). As previously intimated, the Grand Council came into being shortly after the March on Rome, when Mussolini called the more important leaders, some of them his rivals for power, to a meeting at Rome, there to advise with him on policy and on the status of the party. Since that occasion the membership of the Grand Council has been several times revised. As constituted in December, 1929,[4] it is a body of about two dozen members. Party dignitaries on its roster include the three surviving members of the Quadrumvirate of the March on Rome, Marshal Italo Balbo, Marshal Emilio de Bono, and

[1] Art. 16 of the party statute of Mar. 11, 1938, previously cited.
[2] See p. 642.
[3] Arts. 17 and 18 of the party statute of Mar. 11, 1938, previously cited.
[4] Minor modifications in the membership have occurred since, notably in 1936 and 1937.

Count de Vecchi, who are given life tenure. In addition the *Duce* appoints some half dozen other members for three-year renewable terms from among those leaders of the party who have rendered exceptional services, particularly as party secretaries. Because of the Grand Council's adoption as one of the principal organs of the Government, to which reference will be made later,[1] all the remaining members hold their position in the Council *ex officio* as officers of the Government. Those who have been selected for the honor are the presidents of the Chamber of Fasces and Corporations and of the Senate; the Ministers of Foreign Affairs, Justice, Finance, Popular Culture, Education, Agriculture, and Corporations; the President of the Italian Academy; the President of the Special Tribunal for the Defense of the State; the two presidents of the labor confederations of Industry and Agriculture; and the two presidents of the employer confederations of Industry and Agriculture. In addition, of course, the Grand Council's membership includes the *Duce* who presides, and the National Secretary who also serves as the Council's Secretary. As a party organ, the Grand Council exercises constituent power; all the statutes of the party since 1921 have emanated from it. From its deliberations, moreover, there issue, from time to time, basic directions as to the party's policy and organization.[2] The Grand Council is not considered as a part of the party hierarchy, its members being superior to every other party officer or organ save the *Duce*.

The Duce. Above this whole mechanism stands Signor Mussolini. He is the *Duce* (Leader) of the party as he is the *Capo* (Head) of the Government. The power he exerts as *Duce* within the party is, moreover, very similar in character to the power he exerts as Head within the Government; he is a dictator in both instances. Whatever authority may be committed to the various party councils, they are all, even the Grand Council, ultimately dependent upon his will. He appoints their members, presides over them when he wishes to do so, and determines the lines of party policy which they formulate. Occasionally, to emphasize his plenary powers of leadership, Mussolini summons the members of all the party's councils and its chief administrative officers to Rome to hear his *Gran Rapporto* or Grand Report, a summary of

[1] See p. 668.

[2] Art. 13 of the party statute of Mar. 11, 1938, declares that the Grand Council is the party's supreme collegial organ and deliberates on the party's statutes and general policies.

Fascist achievements and an outline of the party's future program. As the party statute succinctly phrases the situation, the party is "under the orders of the *Duce*." [1]

Auxiliary and Affiliated Organs

Purpose of Auxiliary Organizations. A selective policy of admissions to the *Fasci di Combattimento* does not mean that the average Italian is denied opportunity to identify himself in some direct manner with the Fascist cause. Such opportunity is provided by a variety of auxiliary and affiliated party organizations. Some of the organizations are still directly attached to the party and in the eyes of the law constitute strictly party enterprises. Others, although beginning their existence under party sponsorship, have since been given an independent legal existence or else have been made organs of public law.

Gioventù Italiana del Littorio. The most important of the auxiliary organizations is the one relating to youth. The party's youth movement took shape in 1923 in the formation of a body of Fascist youth called the *"Balilla"* after an eighteenth-century juvenile patriot. By a decree of 1926 this became the *Opera Nazionale Balilla* and, thus organized, it was separated from the party and in 1929 placed under the Ministry of National Education. In October, 1937, the youth organization was renamed the *Gioventù Italiana del Littorio* (GIL) and brought again under the direct administrative supervision of the party. The organization embraces special units for boys and girls of various age groups. Boys from 6 to 8 are enrolled in the *Figli della Lupa* (Sons of the Wolf); those from 8 to 14 belong to the *Balilla;* and those from 14 to 18 are enrolled in the *Avanguardia* (Advance Guard). At 18 the boys join the senior unit established in 1930 and known as the *Giovani Fascisti* or Young Fascists. The equivalent feminine units are the *Figlie della Lupa* for girls from 6 to 8, the *Piccole Italiane* for girls from 8 to 14, the *Giovani Italiane* for girls from 14 to 18 and the *Giovani Fasciste* for young women from 18 to 21.[2]

The combined units of the Fascist youth organization now have an enrollment totaling more than seven and one-half mil-

[1] Arts. 1 and 2 of the party statute of Mar. 11, 1938, previously cited.

[2] For a description of the Fascist youth organization see Piccoli, *op. cit.* See also *Outline Studies,* series II, no. 7 (Italian Library of Information, New York, 1939).

lions.[1] Although membership is technically voluntary, recreational and other opportunities provided by the local youth centers, combined with the prestige of association with the regime and the pressure of conformity, bring in most of the middle-class children at least and large numbers of the lower-class children as well. By far the most important level of the youth organization is the *Giovani Fascisti* or young Fascist group, for boys from 18 to 21. As already related, service at this level actually constitutes an apprenticeship prior to full-fledged membership in some local *Fascio* of the party. Moreover, it is chiefly for this level that the regime has developed its system of pre-military training to which reference will be made on a subsequent page.[2] Separately organized, but with functions and purposes quite similar to the Young Fascists, are the Fascist University students who, between the ages of 18 and 26, are enrolled in the Fascist University Groups (*Fascisti Universitari*).

Feminine Auxiliaries. Although the regime frowns upon participation of women in public affairs, a place has been found for them among the party auxiliaries. Feminine *Fasci* (*Fasci femminili*) exist in large numbers. Members, now totaling about a half a million, are recruited each year on the day of the Fascist levy from the ranking level of the feminine units of the youth organization, the *Giovani Fasciste.* Women Fascists serve as leaders and instructors of the younger girls and participate in the party social service and charitable program. The position of inspector in the National Directorate of the party has also been given to representatives of the feminine *Fasci;* and one or two other positions in the party hierarchy are apparently open to women.

The Fascist Militia. In addition to becoming members of the party at 21, Young Fascists are usually drafted at that age into the ranks of what is, traditionally at least, another auxiliary of the party, viz., the Fascist Militia. The Militia is an outgrowth of the Fascist "squads of action," those units of the early days of the revolution which gave the Blackshirt his notorious reputation for direct action and violence. Shortly after the local *Fasci* were combined to form the national party, the unco-

[1] The present membership of each unit of the *Gioventù Italiana del Littorio* is approximately as follows:

Boys		*Girls*	
Figli della Lupa	1,000,000	*Figlie della Lupa*	388,000
Balilla	1,728,000	*Piccole Italiane*	1,669,000
Avanguardia	877,000	*Giovani Italiane*	387,000
Giovani Fascisti	1,169,000	*Giovani Fasciste*	361,000

[2] See p. 744.

ordinated Fascist squads were brought together into a quasi-military organization, the ancient Roman army formations of maniples, centuries, cohorts, and legions having been resurrected for the purpose. A strict disciplinary manual was promulgated to insure the Militia's loyalty to the *Duce* and the party. It was chiefly the Fascist squads, thus transformed into Militia units, who converged on Rome in the famous March of October 28, 1922.

Transformed into the M.V.S.N. Pressure to disband the Militia became quite strong after the March because many leaders felt that even the discipline of the newly co-ordinated organization would not be vigorous enough to repress local *squadrismo* and unauthorized direct action. Mussolini, however, never wavered in his belief that the Militia ought to be continued; and when the dictatorship became firmly established, he and his colleagues proceeded to make it an integral part of the new order of things. The Fascist Militia was accordingly transformed into the Voluntary Militia for National Safety (*Milizia Volontaria per la Sicurezza Nazionale*) with its own general staff and commander by a decree of January 14, 1923.[1] At present it numbers about 400,000. The Militia is the regime's own army and the Praetorian Guard of the *Duce*. To him they take a personal oath which is as fiercely loyal as an oath could well be. Special detachments of the Militia are organized for regular service as administrative police in various governmental departments. Some detachments are stationed in the colonies. Militiamen, particularly the officers, also serve as instructors in the military training courses given the Young Fascists. By far the larger part of the Militia is not in active service; it constitutes a reserve army ready at the call of its commander to serve as special police or as "volunteer" units of the army in war time.[2]

Dopolavoro and Affiliated Organs. To complete the description of party auxiliaries and party-sponsored institutions mention must be made of a number of affiliated organizations. Chief of these is the National Leisure Time Organization (*Opera Nazionale Dopolavoro*). Although this organization has been given an autonomous legal existence,[3] it is subject to the direct control of

[1] No. 31, *G. U.*, Jan. 20, 1923, no. 16, p. 383.

[2] See A. Teruzzi, "La Milizia delle Camicie Nere," in *Panorami di Vita Fascista*, I, edited by A. Mondadori (Rome, 1933). A brief description of the Militia may also be found in the League of Nations *Armaments Yearbook* (Geneva, 1936), p. 498.

[3] Decree law of May 1, 1925, *R. U.*, 1925, V, no. 582, p. 4737; also decree law of Aug. 10, 1927, *R. U.*, 1927, VII, no. 1559, p. 7258.

the party's National Secretary and is still largely administered by party officials. The *Dopolavoro* attempts to realize approximately the same cultural and propagandist objectives among the peasants, farmhands, and industrial workers of the nation as the Fascist youth organization strives to attain in the ranks of the younger generation. It sponsors athletic contests and other kinds of competitions, provides workers' libraries, excursions, free lectures, entertainment of all sorts, and various types of adult training and instruction. In recent years it has introduced rural theatrical performances given by affiliated travelling companies of actors. The Nazi "Strength through Joy" organization is a highly complimentary imitation of this Italian model. First established in 1925, the *Dopolavoro* has grown rapidly, its membership amounting today to some three millions.[1] Other affiliated bodies include the various associations of public employees, adverted to in another chapter,[2] the Italian War Veterans Association, a National Olympic Committee, the Italian Naval League, the National Fascist Institute of Culture, the National Association of *Arditi,* an Association of Families of Fallen Fascists, a Rural Radio League and a Press and Publicity Bureau. These organizations are also under the supervision of the National Secretary of the party.

The Party and the Masses. This survey of the auxiliary and affiliated organs of the party gives at least a clue to the mighty hold which that organization is able to maintain over the rank and file of the Italian people. Through the youth organizations the party disciplines the nation's future citizens; it gives them moral, political, and military instruction and fills up their leisure hours with athletic competitions, parades, excursions, and scores of other diversions. Through the *Dopolavoro* it provides vast numbers of adults with amusements, recreation, and instruction. An even broader scope is given to the party's popular appeal by its social-welfare services. Prior to 1930 these services were carried on chiefly by the women's auxiliaries, the youth organization, and the *Dopolavoro.* Since that year a special organization known as the *Ente Opera Assistenziali,* wholly financed and controlled by the party, has taken over this work and supervises similar activity by other local non-party organizations. It is estimated that in a recent year more than three million cases, in which

[1] For activities of *Dopolavoro* see *Opera Nazionale Dopolavoro* (Rome, 1937); *Annuario statistico italiano* (1937), 280.

[2] See p. 636.

assistance of one form or another was requested, were handled through this agency and that grants for financial relief alone totalled more than eleven million lire.[1] Practically all the popular activity of the party auxiliaries and affiliates is cleared through the communal party headquarters, the Fascist House (*Casa del Fascio*). This thus becomes the center of bounty and favor for the masses, the visible embodiment of the party's interest in the rank and file. As Professor Ascoli has said, the nearest equivalent to the Fascist House "would be a district club in an American city dominated by a political machine—in the good days of the political machines." [2]

Administration and Finance

The Party's Administrative Establishments. The business offices of the party are located in the *Palazzo Littorio* at Rome. An official known as the Administrative Secretary administers the party's property, prepares the annual budget, employs the salaried staff numbering several hundred persons, and generally supervises the party's bureaucracy, both at Rome and in the provinces. A board of three accountants chosen each year audits the party's expenditures and makes a report to the National Directorate.

Party Revenues. Sources of income are various and are not too carefully revealed. Fees paid for the membership cards account for a large part of the revenue, such fees being waived only in the case of disabled Fascist or War veterans, fathers of large families, and sons of Fascists who have died for the cause. Special levies are occasionally imposed, payments being graduated according to the members' private means. Donations, often of generous proportions, are also made quite frequently by the wealthier members or by persons outside the membership roster who seek the party's good will. Frequently membership in the party is a reward for a large financial contribution. Dominant in a totalitarian state, the source of political benefits and perquisites, the Fascist party has no trouble in obtaining funds. Including the donations it secures for the welfare and charitable activities it administers, some 25 millions of dollars pass through its exchequer annually.

[1] See F. Gazzetti, *Social Welfare in Italy* (Rome, 1937), p. 28; see also *Outline Studies*, series III, no. 1 (Italian Library of Information, New York, 1939).

[2] M. Ascoli and A. Feiler, *Fascism for Whom?* copyrighted by W. W. Norton and Co., New York, 1938, p. 109.

Party Organs as Public Organs

Grand Council becomes a Public Body. One of the most noteworthy features of the evolution of the party has been the assimilation of its organs and officials into the formal Government of the State. A development of first importance in this connection is the constitutional position now accorded to the party's Grand Council. Public functions were assigned to that body almost from the day it was established, since Signor Mussolini consulted it indiscriminately on state and party matters. All the earlier legislation for transforming the Government, particularly that enacted after 1925, was discussed in the Council's conclaves and much of it was drafted by its committees for presentation to the Council of Ministers or to Parliament. It became a sort of *de facto* privy council for the Head of the Government on public matters. Finally, having been given a public duty of an administrative character, that of selecting the 400 members for the all-Fascist Chamber of Deputies in 1928, it was decided to make the Council a public body *de jure.* This was accomplished by two laws, one enacted in 1928 and the other in 1929.[1]

Public Powers of the Grand Council. As a public organ of the realm the Fascist Grand Council has two principal prerogatives. In the first place it must be "consulted" on all matters of proposed legislation having a "constitutional" character. The subjects which have this character are as follows: (1) the succession to the throne and the powers and prerogatives of the Crown; (2) the Grand Council's own composition and procedure and the composition and procedure of the two houses of Parliament; (3) the powers and prerogatives of the Head of the Government; (4) executive decree powers; (5) regulations affecting the syndicates and corporations; (6) relations between Italy and the Vatican; and (7) international treaties involving an addition or diminution of national territory.[2] The second function allotted to the Grand Council under this legislation is that of drawing up and keeping a list of names to be submitted to the King to aid in filling the place of Signor Mussolini, should it

1 Law of Dec. 9, 1928, no. 2693, *G. U.*, Dec. 11, 1928, no. 287, p. 5978 and law of Dec. 14, 1929, no. 2099, *G. U.*, Dec. 16, 1929, no. 292, pp. 5594-5595.

2 The legislation granting these powers to the Grand Council is unique in that it gave a quasi-juridical status to laws of a constitutional character. Theretofore constitutional laws had been enacted in the same manner as other laws; since 1929 the process of enacting them has differed from the enacting procedure observed in the case of other kinds of law because of the requirement of this reference to the Grand Council.

become vacant. This function, however, is to be undertaken only on the proposal of Signor Mussolini himself.

Influence of Grand Council on Public Affairs. The actual influence wielded by the Grand Council upon public affairs is problematical. The text of its prerogatives clearly implies that it is intended to be the most august assembly of the realm, its prestige being considerably higher than that of either house of Parliament or even of the Council of Ministers. In its ranks are the leading figures of the regime after the *Duce;* and the number of members is small enough to permit real discussion. Meetings are held quite frequently at Signor Mussolini's headquarters in the *Palazzo Venezia;* and they ordinarily last long enough to warrant the conclusion that they are not the mere ratification ceremonies which distinguish Parliament's deliberations. The Council's deliberations are held behind closed doors; and only a communiqué of the results is issued to the press. On the other hand the Council is in law merely a "consultative" body; the Head of the Government "consults" it as its presiding officer and initiator of its agenda. That he "consults" with it at length is fairly obvious; that he allows the Council to modify his own decisions is possible; that he goes his own way when he wishes, despite the Council, is probable.

Interlocking Party and State Organs. A status like that given the Grand Council has been conferred upon other organs and officers of the party. As indicated earlier in the chapter, the party Militia has become one of the police and military forces of the State. In 1937 the party's National Secretary was invested with the capacity of Minister without Portfolio and was given a seat on the Council of Ministers.[1] Party representatives are also drawn upon to provide at least a part of the membership of many organs of the Government. The National Secretary is an *ex officio* member of the Supreme Commission of National Defense, of the Council on National Education, of the National Fascist Institute of Culture, of the National Council of Corporations, and of the Central Corporative Committee; [2] members of the party's National Council and its Grand Council make up a large portion of the membership of the new Chamber of Fasces and Corporations; and at least three party representatives sit in each of the 22 category corporations.[3] Finally, although not exhausting the possible

[1] Royal decree law of Jan. 11, 1937, no. 4, *G. U.*, Jan. 23, 1937, no. 18, p. 256.
[2] These prerogatives of the National Secretary are confirmed in art. 14 of the party statute of Mar. 11, 1938, previously cited.
[3] See pp. 642 and 691.

illustrations, every one of the 98 Provincial Administrative Juntas contains four provincial party representatives.[1] Occasionally, too, the reverse of this interlocking relationship exists. Such, as we have seen, is the case with the membership of the Grand Council of the party, a majority of whose members are public officials sitting in the Council because they hold a government office.

The Party-State

State and Party Merged. In the light of what has just been said, the description of the party given at the outset of this chapter as a body in the service of the State, although legally accurate, is no longer adequate. The boundary lines between party and State, fairly clearly defined even as late as 1932, have been obliterated; and the areas of party and State jurisdiction, once separate or at most complementary, have been merged. Even Signor Mussolini's official status reflects this change. Technically he has hitherto been *Duce* of the party and *Capo* of the government. Recently these two titles have been compounded; and the compound title legally identifies him whether he speaks for the party or for the Government. In the law creating the Chamber of Fasces and Corporations, enacted in January, 1939, he is referred to in paragraph after paragraph as *"Duce del Fascismo, Capo del Governo"* (Leader of Fascism, Head of the Government).[2] The entire development is of considerable importance. From a constitutional point of view at least, the Fascist political system has finally arrived at the goal, set for it by Signor Mussolini in 1929, of eliminating the dualism between party and State. Henceforth party and State are one, not merely in the sense that the party as a whole is a body with public functions, but in the sense that the party's organs and activities have been inextricably interwoven with the processes of government and public administration. The State with a single legally recognized party has become a party-state.

Fascism as an Ideology

Character of Fascist Doctrine. Having traced thus far Fascism's progress towards constitutional maturity, it may not be amiss to describe briefly its ideology. That has been systematized rather slowly. Action has usually preceded reflection, a not illogi-

[1] See p. 654.

[2] See for instance arts. 4, 5, 10 and 15 of the law in *B. P.*, XII (Dec. 1938), pp. 76 ff.

cal order for a regime as opportunistic as Fascism or, as Signor Mussolini has put it, for a regime which cannot tolerate doctrine as "a shirt of Nessus clinging to (it) for all eternity." A marvelous succession of doctrines and philosophies have flowed through the Fascist ideological mill—republicanism, monarchism, Marxian socialism, Sorelian syndicalism, Hegelian nationalism, futurism, and even liberalism. Ideas have been culled, subtly or openly, from almost every political philosopher from Plato to Pareto.[1] The most disparate ideological timbers have been morticed together to provide a rather ramshackle structure, which has then been stuccoed with rhetorical phraseology, half truths, and, it must be admitted, some whole truths. Signor Mussolini himself considers the doctrine respectable enough to characterize it as having attained "a universality above all doctrines" in the present period and as an "epoch in the history of the human mind."

Theory of the State. The core of Fascist doctrine is the position accorded the State.[2] The liberalism of the nineteenth century, it is alleged, conceived of the State as merely a mechanism which set limits to antecedent liberties of individuals and groups and arbitrated the differences amongst them. Fascism, on the other hand, conceives of the State as possessing an ethical personality with a will and convictions of its own. It is also an absolute State beside which the rights and wills of individuals and groups are merely relative. The State in Fascist thought is, moreover, not a mere "political department," assuming an attitude of detachment towards other facets of a nation's life; on the contrary it is a "spiritual and moral" entity which embraces the entire nation, gives form to the "political, juridical and economic" organization of society, preserves and strengthens the people's culture, and provides the motive force that propels a people to greatness.

Rejects Liberalism and Democracy. Certain ancillary ideas help to clarify this conception of the State. In the first place

[1] For some of these, particularly those which have influenced Mussolini, see W. K. Stewart, "The Mentors of Mussolini," *Amer. Polit. Sci. Rev.*, XXII (Nov. 1928), 843-869.

[2] What follows is based chiefly on Mussolini's "The Doctrine of Fascism" appearing in vol. XIV of the *Enciclopedia Italiana* and reprinted and distributed in pamphlet form by the Italian Government. The essay also appears as a preamble to the party statute of Mar. 11, 1938, *G. U.*, May 18, 1938, no. 112, p. 1848. See also A. Rocco, "The Political Doctrine of Fascism," *International Conciliation*, no. 223, Oct. 1926, and the same author's "Transformation of the State" in *What Is Fascism and Why?* edited by T. Sillani (London, 1931); G. Gentile, *Origini e Dottrina del Fascismo*, 3d ed. (Rome, 1934), and the same author's "The Philosophic Basis of Fascism," *Foreign Affairs*, VI (1928), 290 ff.

Fascist theory rejects nineteenth-century liberalism and democracy, usually referred to in present-day Italy as "demo-liberalism," a word of the *Duce's* own inimitable coinage. Liberalism, it is alleged, meant a self-denying State and even State suicide. The parties and other political groups of such a State introduced paralysis and anarchy into government. Liberalism is, moreover, an historical phenomenon limited to the nineteenth century and long since outmoded. Democracy is a false premise or, at least, is posited upon the false premises of political equality and collective action. Fascist theory denies that popular sovereignty and popular consultation have any significance; where such fictions exist, it says, they lead to corruption and the obscuring of responsibility. "Democracy," in the oft-quoted statement of the *Duce,* "is a regime without a king, but very often with many kings, far more exclusive, tyrannical and ruinous than a single king, even if he be a tyrant." Instead of democratic equality, Fascism emphasizes the "fertilizing, beneficent and unassailable inequality of men," and insists that only when political and social institutions are so organized as to exhibit this principle, is progress and national greatness possible.

Rejects Socialism. Fascism also rejects Socialism, or Marxism, as it usually is called in Italy. Marxism, say the Fascists, emphasizes purely materialistic considerations in the unfolding of human civilization and holds that productive forces, the system of control over those forces, and the wealth which they create, constitute the key to the nature of social institutions. Without denying the importance of materialistic forces, Fascism strenuously rejects their alleged all-pervasive influence. It insists that due significance be attributed to idealistic motives, to personal heroism and sacrifice, and to the character of the human will which recognizes no external impediments, economic or otherwise, in its operation, nor any limits to its creative capacity. These idealistic forces, Fascism believes, secure their most fruitful expression, in terms of human progress, when society is controlled and disciplined by a strong state. The Fascist reliance at this point upon the German philosopher, Hegel, and upon the neo-Hegelians of the former Italian Nationalist Party is obvious.

Rejects Pacifism and Idealizes Violence. Finally Fascism spurns pacifism and any organized effort to foster such a sentiment, particularly international efforts which might limit the State's independence of action. Pacifism, say the Fascists, is but a blind for the lack of personal will and courage. War and vio-

lence, on the other hand, bring human creative faculties to their highest pitch, cut through the Gordian knots of past injustices, release the strangle-hold of outworn or outmoded institutions, and set a "seal of nobility" upon a people. In this connection, Fascism now idealizes the early acts of violence and terror committed by its Blackshirts during the revolutionary period. Those acts with their risks of personal injury and death, Fascism contends, were the earmarks of the citizen of the new Italy, the Italy which it has created.

Fascist Doctrine Implies Authoritarian Government. From this brief analysis of the basic premises of the Fascist philosophy of the State, two corollaries concerning Fascist governmental institutions may be derived. The first is that the Government of the State shall be *authoritarian* in character. The actual power of government shall not reside in the people, but in the State as an abstraction, to be wielded by those who, by their courage, revolutionary zeal, and victory over all kinds of obstacles, have demonstrated their capacity for rulership. *A fortiori,* primary authority among those who rule shall be vested in him who, for sagacity and will power, has transcended all of his associates. To the will and discretion of the rulers, the rank and file of the citizens shall conform. Upon the rank and file is to be imposed discipline, order, and direction with no limitation except such as the rulers themselves choose to obey.

It also Implies Totalitarian Rule. The second corollary of Fascist political philosophy is that the Government shall be *totalitarian* in scope. Just as there is no qualitative limit to the Government's authority, so there is no limit to the area over which that authority may be exerted. Since the State is the creator, the molder and the preserver of society, since "everything is within the State and nothing outside or against the State," the State's Government may control every aspect of human endeavor whether it relates to the political, economic, or moral sphere. Here, too, only the discretion of the rulers can determine the limits of political action. As Mussolini puts it: "The Fascist State organizes the nation, but leaves a sufficient margin afterwards to the individual; it has limited the useless or harmful liberties and has preserved the essential ones. The one to judge in this respect is not the individual but the State." Previous chapters have considered the authoritarian applications of this governmental doctrine; it remains for subsequent chapters to describe the impression which totalitarianism has made.

CHAPTER V. THE CORPORATE STATE

Advent of Totalitarian Economic Control

Four Periods of Corporative Development. The fruit of Fascist totalitarianism in the economic sphere is to be discovered in the institutions and processes described by the phrase "corporate state" (*stato corporativo*). These did not come into being at one time; they represent rather the accumulation of ideas and machinery perfected in various periods between 1926 and the present. In the first of these periods, that between 1926 and 1930, the so-called syndical aspect of the corporate State was elaborated—a vast hierarchy of legally recognized associations or syndicates, representing capital and labor and certain incidental public administrative organs to which were intrusted the duties of fixing wages and conditions of labor in economic enterprise, the arbitration and adjudication of economic disputes between capital and labor, and the promotion of economic peace. The second period began around 1930, when, following the impact of the world depression, the Fascist Government began the policy of direct intervention in private economy. During this period the Government created various public bodies (*Enti, Istituti*) through which it exerted a more intimate form of economic regulation than had formerly existed, and even began to participate in the ownership and active management of certain large-scale industries. The third period came in 1934 with the creation of the "corporations" proper, instruments to which were allotted the duties of supervising syndical activity, enforcing cooperation between entrepreneurs in related sectors of private economy, and establishing a more effective co-ordination between the objectives of private entrepreneurship and public policy. The fourth and last period was ushered in shortly afterward. It involved the policy of integrating the syndicates and corporations with the "political organs" of the Government, a policy largely fulfilled in January, 1939, when the new lower house of the Italian Parliament, known as the Chamber of Fasces and

Corporations, was created. As already indicated the majority of the personnel of this new Chamber is taken directly from the personnel of the corporations. The whole structure thus elaborated provides one of the most complex politico-economic mechanisms ever devised, a structure through which the Fascist Government ostensibly regulates national economic activity in as detailed a fashion as even the most extreme nineteenth-century advocate of State Socialism could have desired.

The Beginnings of State Syndicalism

The Fascist Labor Movement. The circumstance which encouraged Fascism to develop the syndical or first phase of corporate control was its close alliance with a labor organization. The Fascist squads' "War on Bolshevism" during the latter part of 1921 and early in 1922 had greatly weakened the prestige and influence of both the Socialist General Confederation of Labor and the Catholic Populist Italian Confederation of Workers. Fear of the squads and the influence of employers caused many of the rank and file to desert the component unions or "syndicates" of these Socialist and Catholic organizations and to join "patriotic" labor syndicates organized by the employers themselves or by labor organizers more or less directly affiliated with the Fascist cause. Among the latter was Edmondo Rossoni, a former Syndicalist Socialist of the school of Georges Sorel, and an organizer of I.W.W. unions in America before the World War. Rossoni brought the various "patriotic" syndicates together into a national organization which in January, 1922, became formally allied with the Fascist Party. The "patriotic" syndicates were grouped into five nation-wide federations, corresponding to five major categories of economic activity. Each of these federations was called a "corporation," a term evidently derived from the Constitution which Gabriele d'Annunzio had written for Fiume during his occupation of that city in 1920. The five corporations were in turn banded together into a single national organization, first known as the Federal Italian Union of Corporations and later as the Confederation of Fascist Syndical Corporations. Rossoni first became the secretary of this Confederation and later its president. Fascism's increased prestige following the March on Rome and the continued pressure exerted against the Socialist and Catholic labor organizations helped greatly to swell the ranks of Rossoni's Confederation. By 1924 the syndicates which it controlled had a paper membership of one and three-quarter mil-

lions, while the membership of the Catholic organization had dwindled to less than half a million and that of the Socialist Confederation to less than a quarter of a million. Within a short time both of these organizations were dissolved by decree and the Rossoni Confederation of Fascist Syndical Corporations achieved a virtual monopoly of the Italian labor movement.

The Pact of the Palazzo Vidoni. The fruit of this monopoly was the conclusion, in October, 1925, of the now famous Pact of the *Palazzo Vidoni*. Under the patronage of the *Duce* and of the National Secretary of the party, Rossoni and the leader of the powerful Italian Confederation of Industrialists pledged their adherence to a joint declaration affecting labor. In it the employers agreed to recognize only the Rossoni labor syndicates and to bargain with them collectively in determining wages and other conditions of employment. The labor shop committees, which had existed in certain factories since the last Giolitti cabinet, were to be abolished. In return for this recognition, Rossoni promised that the leaders of his labor syndicates would avoid strikes and labor stoppages and settle any disputes with employers by arbitration. Within a week after the conclusion of this pact the Government gave it legal recognition.[1]

Inauguration of Public Syndical System. The Pact of the *Palazzo Vidoni* was an important milestone, not only for the Fascist labor movement, but for the Fascist regime as a whole; for in the Pact are to be found most of the principles incorporated six months later in the legislation which inaugurated the public syndical system and thus the first phase of the corporate system. The provisions of this legislation, known as the Law on the Legal Discipline of Collective Labor Relations and signed by the King on April 3, 1926,[2] may be summed up as follows: (1) It set up parallel syndical organizations of employees and employers and directed them to assume the responsibility for formulating collective labor contracts fixing wages and other conditions of employment; (2) it abolished all forms of economic warfare, including strikes by labor and lockouts by employers; (3) it stipulated that all disputes between capital and labor, of whatsoever nature, must thereafter be conciliated or adjudicated; (4) for the latter purpose it created administrative process and a special set of courts known as the Labor Courts (*Magistratura*

[1] For a summary of these developments, see H. W. Schneider, *Making the Fascist State* (New York, 1928), p. 176.

[2] No. 563, *G. U.*, Apr. 14, 1926, no. 87, p. 1590.

del Lavoro). Supplemented three months later by an extensive decree of about 100 articles [1] and by a statement of fundamental social and economic principles, known as the Labor Charter, promulgated by the Grand Council on April 21, 1927 [2] this new system of labor relations went into effect shortly thereafter and became one of the outstanding novelties of the regime.

Syndical Institutions

Syndical Prerogatives. The syndical organizations for employees to which the Government extends legal recognition must technically embrace within their respective membership lists at least 10 per cent of all the workmen engaged in a specific type or category of economic enterprise. In actual practice the Government extended its recognition to the syndical organizations formerly belonging to Rossoni's labor Confederation. Employers' associations or syndical organizations are legally recognized whenever their respective memberships of persons or firms employ at least 10 per cent of the workmen of a specific type or category of economic enterprise. Associations or syndicates of professional persons and artists, who cannot well be classified either as employers or employees, are given separate recognition provided they fulfill the 10 per cent qualification as to membership. Only the recognized syndical organizations of employees and employers can formulate the collective labor contracts; once formulated, moreover, these contracts legally extend to all employees and employers engaged in the type of economic enterprise represented by the contracting syndical organizations, even though many of them may not be members of the organizations. The law, moreover, authorizes the recognized syndical organizations to collect syndical dues within their field of operations from members and non-members alike.[3] In the case of employers these dues may not exceed one day's payroll per annum; in the case of employees they may not exceed one day's pay per annum. The dues are actually collected by the Government and only a part of the proceeds goes into the syndical treasury. The remainder is used to defray the expenses the Government incurs in supervising the syndical system and to help finance such party auxili-

[1] Decree of July 1, 1926, no. 1130, *G. U.*, July 7, 1926, no. 155, p. 2930.

[2] *G. U.*, Apr. 30, 1927, no. 100, pp. 1794 ff. The law of April 3, 1926, and the Labor Charter are translated and printed in H. W. Schneider, "Documents on the Fascist Government of Italy," in W. E. Rappard and others, *Source Book on European Governments* (New York, 1937), Section III, pp. 32 ff. and 44 ff.

[3] Apparently syndicates may also collect additional dues from *bona fide* members.

aries as the Fascist youth organization and the *Dopolavoro*. Finally the syndical organizations are given the responsibility of discharging a variety of social welfare functions, particularly those relating to workers' insurance. The net result of these sweeping privileges conferred upon the recognized syndical bodies is to assure them a complete monopoly of syndical organization and activity; moreover, although still regarded as autonomous legal bodies, they have been transformed by these privileges into quasi-public institutions for the regulation of labor relations.

The Original Syndical Structure. Under the legislation of 1926 legal recognition was extended to the so-called primary or first-degree syndicates, that is, those in which employees and employers were actually enrolled. If the activity represented by one of these primary syndicates was sufficiently dispersed, its jurisdiction sometimes included the entire nation; usually, however, a primary syndicate's territory embraced part of a province, a whole province, or a region. All primary syndicates in the nation, engaged in the same category of production, were then brought together into separate employers' and employees' syndical federations or second-degree associations. These, in turn, were grouped horizontally into third-degree combinations, called confederations. There were 13 confederations, six each for employers and employees in six broad fields of national economy, viz., Industry, Agriculture, Commerce, Banking and Insurance, Maritime and Air Transportation, and Land Transportation, and a separate confederation for Professional Men and Artists. The latter were organized into 22 national syndicates, equivalent in their case to federations. Normally under this scheme of organization, collective labor contracts were made by the confederations although it was also possible for the primary syndicates to make such contracts.

Recent Structural Changes. Subsequently this structure underwent considerable alteration. First the local primary syndicates lost their legal recognition and became simply local units of provincial or inter-provincial syndical unions. Legal recognition was thereupon transferred to these unions. Then in 1934 even the provincial and inter-provincial syndical unions lost their recognition as did also all other primary syndicates organized on a regional or national basis.[1] Thereafter legal recognition was extended only to the second-degree organizations, that is, the

[1] Except the 22 national syndicates representing Professional Men and Artists.

federations, and to the third-degree organizations, that is, the confederations. At the same time the confederations were reduced from 13 to 9, the former employer and employee confederations for Maritime and Air Transportation and for Land Transportation being combined with the appropriate Confederation for Industry.[1]

Present Syndical Structure. At the present time, therefore, the base of the syndical pyramid consists of a great variety of regional syndicates and of provincial and inter-provincial syndical unions, the latter with local syndical divisions, all of which organizations are without legal recognition. Though they are the actual units in which syndical members are enrolled, they constitute little more than local offices for the syndical organizations of higher degree. Of the latter the federations are now the more important since they alone can make the collective labor contracts. Some 33 federations—4 for Agriculture, 20 for Industry, 5 for Commerce, and 4 for Banking and Insurance—exist for employees and some 99 federations—4 for Agriculture, 45 for Industry, 37 for Commerce, and 13 for Banking and Insurance—exist for employers.[2] In addition there are the 22 national syndicates for Professional Men and Artists which continue their legal existence and serve as the equivalent of federations. Above these federations stand the nine great confederations, four for employers and employees respectively in the fields of Agriculture, Industry, Commerce, Banking and Insurance, and the Confederation of Professional Men and Artists. The confederations coordinate the social welfare services of their constituent organizations, supervise their finances, attempt to iron out syndical disputes, and represent the syndical organizations before the national governmental authorities.

Public Control: The Ministry of Corporations. Governmental control over the syndical organizations is maintained by the Ministry of Corporations. As indicated in another chapter,[3] this agency was created by special decree in July, 1926.[4] Until the establishment of the first "corporative" institutions in 1934,

[1] For these developments see W. G. Welk, *Fascist Economic Policy* (Cambridge, 1938), pp. 57, 122; see also F. Pitigliani, *The Italian Corporative State* (New York, 1934), pp. 26 ff.

[2] For these statistics see *Outline Studies,* series II, no. 4 (Italian Library of Information, New York, 1939), pp. 43-46.

[3] See p. 633.

[4] Decree of July 2, 1926, no. 1131, *G. U.,* July 7, 1926, no. 155, p. 2941; the ministry was elaborated in the decree of Mar. 17, 1927, no. 401, *G. U.,* Apr. 4, 1927, no. 78, pp. 1433-1434.

to be described later,[1] the Ministry of Corporations, despite its name, was in reality chiefly concerned with the activities of the syndical system. Its officials now inspect the charters of the syndical organizations and grant and withdraw legal recognition at pleasure. Short of such action, they may suspend the internal administration of a syndical organization and vest its affairs in a temporary Government commissioner. The ministry's officials also fix the amount of the syndical dues and determine how the proceeds of such dues are to be distributed. Special offices exist in the ministry for the conciliation of collective labor disputes and for the inspection of all collective contracts to insure that they conform with national labor law. The withdrawal of legal recognition from all local syndical organizations and their transformation into mere offices of the syndical federations and confederations, discussed on a previous page, has greatly facilitated the powers of control exerted by the Corporations Ministry. Indeed the change in the status of the local organizations was made partly, if not chiefly, with this end in view.

Syndical Officials. The administration of each of the regional syndicates and of local units of the inter-provincial syndical associations is in the hands of an executive official called either president or secretary, who is assisted by a small advisory council or directorate. Syndical usage stipulates that these officials be elected. The electoral process, however, has little in common with similar procedure in democratic countries. Competitive lists of nominees, drafted spontaneously by the members, are almost unheard of; instead there is an official list drafted by existing syndical officials, local party dignitaries and governmental officials. Voting is restricted in practice to this list and is usually *viva voce*. The same practice obtains in the case of superior units of the syndical hierarchy. The occasional congresses of the national federations consist of local and provincial presidents and secretaries and not of locally elected delegates. These congresses "elect" the presidents and directorates of the federations, acclaiming officially prepared and endorsed slates of candidates, usually incumbents.[2] Even these quasi-electoral formalities have been

[1] See pp. 690-694.

[2] On the government of the syndical associations see G. Salvemini, *Under the Axe of Fascism* (New York, 1936), pp. 39 ff.; Carmen Haider, *Capital and Labor under Fascism*, Columbia University Studies in History, Economics and Public Law, no. 318 (New York, 1930), pp. 221-225; H. W. Schneider, *The Fascist Government of Italy* (New York, 1936), p. 81. See also G. Lowell Field, *The Syndical and Corporative Institutions of Italian Fascism*, Columbia University Studies in History, Economics and Public Law, no. 433 (New York, 1938).

dispensed with in the case of the presidents of the nine great confederations; and since 1934 their appointment has been vested in Mussolini acting nominally through the Corporations Ministry. Whether "elected" or appointed, officials of the syndical hierarchy are subject to the constant scrutiny of the Corporations Ministry which may remove any of them for conduct unbecoming a good Fascist. In practice all the higher syndical officials and most of the lower ones as well receive their positions as party henchmen. They retain these positions indefinitely and regard them as the basis of a permanent career in the syndical service.

Labor Courts. To complete this description of the syndical institutions one other agency, established in 1926, must be mentioned. This is the Labor Court, authorized to settle by judicial means all collective labor disputes, that is, disputes arising between syndical organizations over collective contracts which have not been solved by some other process. The Labor Court is merely a section of one of the Courts of Appeal of which there are some 28 in Italy. Each Labor Section consists of three Appellate judges and two lay experts or assessors (*assessori*). The latter are appointed from a panel of citizens named annually in each Appeals district by the first president of the Appellate Court.[1]

The Syndical System in Operation

Growth and Importance of Syndical Organizations. Fascism's public syndical system has now been in operation for more than a decade and has become one of the more mature features of the regime. The statistical record of its activity assumes impressive proportions. The membership rolls of the various organizations in the system account for almost six million employees, or approximately 75 per cent of the total employed population of the kingdom, and somewhat over two million employers. In addition membership is also held by about 125,000 professional persons or independent artists.[2] Syndical dues collected in 1937 amounted to more than 308 million lire.[3] The primary syndical units, having lost legal recognition and the power some of them once had of entering into collective contractual arrangements,

[1] See Pitigliani, *op. cit.*, pp. 76-77.

[2] The actual figures as of January, 1938, were as follows:

Employers	2,161,881
Employees	5,860,579
Professional persons	123,702

For these figures see *Outline Studies*, series II, no. 4 (Italian Library of Information, New York, 1939), p. 32.

[3] *Annuario statistico italiano* (1937), 167-168.

have become vehicles through which the regime applies its social and welfare legislation, dispenses its bounty to rank and file, and schools the worker in loyalty to Fascism. Generally these serve as local fountains of Fascist influence and discipline, emulating in these respects the local party headquarters.

Collective Labor Contracts. Collective labor contracts, as already indicated, are now formed exclusively by the syndical federations. The contracts may be drawn up on a national, interprovincial, or provincial basis. In addition to stipulations as to wages and hours, contractual provisions relate to workmen's vacations, seniority rights, apprenticeship, factory discipline, protection of the employer's property, conditions under which jobs are retained and forfeited, and other matters. All conditions must be set forth in writing, including the time for which the contract is supposed to run. Once stipulated, the contracts must be deposited with the Ministry of Corporations which determines whether they conform with existing labor law. If no objection is entered, they are forthwith published, those of national application in the Official Gazette of the kingdom, those of local application in the official provincial publication. The dislocations which have afflicted Italian economic life since 1926 have required renewal or reformation of contracts at rather frequent intervals. In 1935 more than 1400 were published; in 1936, more than 1000; and in 1937, more than 1600. Up to 1938 the number of collective labor contracts, stipulated or published since 1926, had reached the amazing total of 15,446.[1] Of these, 14,026 had a provincial application and 1420 applied to several provinces or to the nation as a whole, a ratio of approximately 10 to 1. The majority of the contracts applied to industry; commerce accounted for the next largest number and agriculture for the next.

Collective Disputes. Settlement of labor disputes by public tribunals has also become a settled feature of Italian economic life. So-called collective disputes, that is, those which arise between syndical organizations over the terms of a labor contract, are submitted in the first instance to the arbitral offices of a special conciliation tribunal set up within the offices of the Ministry of Corporations. If its efforts fail to bring an adjustment, the dispute may then be taken to the Labor Court, of which

[1] These figures were obtained from *Annuario statistico italiano* (1937), 168, and from *Outline Studies*, series II, no. 4 (Italian Library of Information, New York, 1939), p. 33.

the structure has already been described. During 1935, 142 collective disputes were brought to the Corporations Ministry, which adjusted 95 of them. The following year, 183 collective disputes were taken to the Ministry and 87 were thus amicably disposed of.[1] The remainder were either settled by the disputants directly through new contracts, were left pending, or were transferred to the Labor Court. In practice it appears that relatively few of the collective disputes ever reach the docket of this judicial tribunal. The subject of such a dispute lends itself far more readily to an *ad hoc* arbitral settlement than it does to solution by legal process.

Individual Disputes. A quite different procedure exists for the solution of the so-called individual economic disputes, those arising between master and employees over the interpretation of reciprocal rights or duties established by law, usage, or contract. In their case recourse is had in the first instance to the syndical authorities in whose jurisdiction the dispute originates. If this fails to provide a settlement, the case may then be taken by the appropriate party to the courts. Prior to 1928 special labor courts (*collegi di probiviri*) existed to hear such cases. These have been suppressed and resort must now be had to the regular judicial tribunals of first instance, that is, the courts of the praetor and the Tribunals.[2] At the request of either party to the dispute, the magistrate in these courts must associate with himself two experts, one chosen from a labor panel and one from an employer's panel, both panels being appointed by the magistrates of the Labor Section of the Courts of Appeal from lists of nominees provided by the Provincial Corporative Councils.[3] Before beginning a formal hearing of the case, the court must try to settle the dispute by arbitration; if no settlement occurs, regular civil procedure is invoked. Existing labor legislation, applicable collective contracts, and judicial precedents furnish the law in these cases. If novel issues are presented, or the case involves a considerable sum in potential damages, an appeal may be taken to the Labor Section of the Courts of Appeal, that is, to the regular Labor Court. It is as an appellate tribunal in these individual labor controversies that the regular Labor Court

[1] For these statistics, see *Annuario statistico italiano* (1937), 170, and *Outline Studies*, series II, no. 4 (Italian Library of Information, New York, 1939), p. 33.

[2] Cases involving sums up to 5000 lire are begun in the praetor's court; cases involving sums above that amount are begun in the Tribunals; see Pitigliani, *op. cit.*, p. 68.

[3] See p. 699 for further particulars as to these Councils.

renders its most important service. Principles and precedents are established in its decisions which go far towards unifying Italian labor law and filling in the interstices of what is still a relatively undeveloped branch of jurisprudence. A further appeal to the highest court of the land, the Court of Cassation, is an infrequent but not an unknown event.

Number of Such Disputes. The turnover of individual disputes has been enormous. In 1935 the syndical organizations of the two great employees' Confederations of Agriculture and Industry were requested to act upon more than 219,000 such disputes. Of these about 198,000 were handled by the syndicates and, in about two-thirds of the cases, results were obtained favorable to the workman complainants. In 1936, 174,000 cases were presented, 168,000 proceeded with, and again about two-thirds had a favorable issue for the workmen.[1] The courts also bore a huge burden. During 1935 the courts of the praetor and the Tribunals had approximately 33,000 labor cases placed upon their dockets. Of these about one-half were abandoned by the complainants or arbitrated by the judges; the other half were pressed to a decision. During the same year, the dockets of the Labor Court, that is, the Labor Section of the Courts of Appeal, contained some 2315 appeals in labor controversies from the courts of first instance. Of these 376 were arbitrated by the Labor Court and 1827 pressed to a decision. In their handling of this large grist of cases, the courts appear to be genuinely impartial. Criticisms, nevertheless, are numerous because of crowded dockets, delayed decisions, and the expense which resort to the courts entails especially for the workmen.[2] Demands have consequently been made for a cheaper and more expeditious handling of individual labor controversies once they have gotten beyond the stage of syndical conciliation.[3]

Labor Peace. The outlawry of labor warfare appears to be generally effective. The law defines as a strike any occasion where three or more employees leave work or commit sabotage by agreement in order to bring pressure upon employer or the Government to change labor conditions. Lockouts are so defined when the employer suspends employment, thereby attempting to force a change in labor legislation or collective labor contracts. The penalty for a lockout is a fine ranging from 10,000 to 100,000

[1] These statistics compiled from the *Annuario statistico italiano* (1937), 168.
[2] *Ibid.* (1936), 286.
[3] See especially Salvemini, *op. cit.*, p. 80.

lire; the penalty for striking is a fine ranging from 100 to 1000 lire for individual strikers and the additional penalty of imprisonment up to two years for strike leaders.[1] The courts have been fairly lenient with participants in strikes which have occurred pending legal settlement of labor disputes; they have been severe with any strikers animated by a political motive. The law proscribing lockouts is apparently difficult to enforce since an employer may close down his plant on the plea that business no longer warrants operation, and such an explanation, being difficult to disprove, the courts must perforce accept.[2] Official statistics indicate that some labor disturbances occurred just after the syndical system went into operation; since 1931, however, the number of persons participating in those which have occurred has been negligible.

Economic Results of Syndical System. Labor peace and uninterrupted production, which the syndical system has given Fascist Italy, have undoubtedly saved the nation's economy millions of lire. Whether labor itself, chiefly involved in the syndical system, has been injuriously or beneficially affected by that system, is of course a moot question. Up to 1935, at least, the whole period of public syndical activity was characterized by economic deflation. The deflationary process began in December, 1927, when the lira was devalued and was continued after 1930 as a result of the world economic crisis. For about 10 years, therefore, the wage curve in Italy was steadily downward. Work-spreading policies, such as the five-day week, adopted in 1934 to combat unemployment, have also cut into the individual workman's income. Although commodity prices have in some instances been kept at artificially high levels owing to the Government's fiscal and autarchic policies, the cost of living has, of course, also declined. The consensus of opinion, however, appears to be that the real wages and the standard of living of the Italian workman have been definitely reduced.[3] The Charter of Labor declares that in making wage scales, the "normal demands of life, the possibilities of production, and the output of labor" shall all be considered; and it may be presumed that the syndical associations and the courts have borne this injunction in mind. Collective wage

[1] Art. 18 of law of Apr. 3, 1926, no. 563, previously cited.

[2] Salvemini, *op. cit.*, p. 71; also H. Finer, *Mussolini's Italy* (New York, 1935), p. 505.

[3] Salvemini, *op. cit.*, pp. 220-237; H. W. Schneider, *The Fascist Government of Italy* (New York, 1936), p. 86; Welk, *op. cit.*, p. 242. For official cost of living indices and wage levels, 1929-1937, see *Bollettino dei prezzi* (supplement to *G. U.*, Dec. 1937), pp. 772-773.

scales, moreover, had largely been established at the time when the most precipitate decline began; hence labor was in a good bargaining position. It is possible, therefore, that in this process of decline, the syndical system has given labor protection as adequate as could have been devised. On the other hand, had the labor syndicates been really free of governmental influence, and had the workmen been represented by syndical officials of their own choosing rather than by officials dependent upon the favor of the government, there would be greater assurance than at present exists that the reduction of the real wages of Italian labor has been economically inevitable.

Corporativism—Experimental Phase

Freedom of Enterprise Under Syndicalism. National syndicalism was Fascist Italy's first experiment in large-scale public economic control. The foregoing pages have, however, made it fairly clear that the chief effects of that control were felt by labor and not by capital. The syndical system, to be sure, imposed upon capital a sort of national "closed shop," fixed the cost of labor in private enterprise and thus indirectly affected prices, technically forbade lockouts, and introduced public and party intervention in the affairs of the entrepreneur's own syndical organizations. Nevertheless the larger aspects of private enterprise remained relatively free. The investment of capital, the flow of credit, the management of factories, farms, and exchanges, the control of production, the distribution and exchange of commodities, the payment of dividends and salaries, in short, all the manifold activities of economic enterprise in a capitalistic society, other than its relations with labor, were subjected to a form of control by the State relatively as unplanned in character and as unsystematic as that exercised contemporaneously in the remaining states of Western Europe. If, in the years immediately following the inauguration of national syndicalism, Fascism indicated any special predilections for interfering with private entrepreneurship, these were exhausted in sporadic efforts at governmental price-fixing, in a somewhat more thoroughgoing effort to control currency, foreign exchange, and foreign trade than elsewhere, in an occasional subsidization program for some type of industry such as shipbuilding, and in the application of an unusually high and comprehensive system of taxation, much of it direct in character. High taxation, it must be added, was nothing new under Fascism, since the tax structure had been a high

one in Italy long before Signor Mussolini and his colleagues came into power.

Totalitarian Threat to Enterprise. Nevertheless over the persisting freedom of private enterprise there always hung the Damoclean sword of Fascism's totalitarian theories of government. Potentially, at least, these theories embraced capital as well as labor. Nor was there any lack of Left-wing Fascists who were willing to treat capital just as labor had been treated, who, from the day national syndicalism was inaugurated, demanded a form of public control over private enterprise comparable to that which had been erected over labor. The factors which chiefly stayed their hand at first were: (1) the magnitude and complexity of such an undertaking as public control over enterprise; (2) the persisting influence of *laissez faire* theorists in the ranks of the party; (3) the economic power and resulting political influence of entrenched capitalism opposed to regulation; (4) a relatively high degree of national prosperity; and (5) the fact that the Italian entrepreneur had befriended Fascism in its infancy and had not ceased to be loyal to it after it had attained power.

Origin of "Corporativism." Even so the more radical Fascist political elements provided capital with a concrete threat of what might be in store for it at the very time that the public syndical system was devised. The law of April 3, 1926, which established the syndical system, had suggested that representatives of employers' and employees' syndicates might be brought together into "central liaison organs." [1] The subsequent decree for the enforcement of the syndical legislation carried this suggestion further. It provided that the "central liaison organs" should become agencies of "public administration," that they should be composed of equal numbers of representatives from employers' and employees' syndicates, and that they might establish labor exchanges, conciliate labor disputes and, most significant of all, "co-ordinate and improve production." [2] The decree applied to these "central liaison organs" the name of "corporations," borrowing the title which Rossoni had used in the early days of the Fascist labor movement for his syndical federations and which he, in turn, had derived from the nomenclature of the ephemeral D'Annunzian constitution for Fiume. The day after this decree was published a National Council of

[1] Art. 3 of the law no. 563, *G. U.*, Apr. 14, 1926, no. 87, p. 1590.

[2] Arts. 42-44, decree of July 1, 1926, no. 1130, *G. U.*, July 7, 1926, no. 155, p. 2930.

Corporations consisting of a variety of public, party, and syndical officials, together with the Ministry of Corporations, was established.[1] The threat of public control over private enterprise implicit in these developments was, to be sure, merely a threat at the time; for despite a great deal of subsequent discussion about the new "corporative organizations" and the popular stimulus given the "corporative movement" by Signor Mussolini's assumption of the headship of the Corporations Ministry, no effort was actually made at the time to bring corporations into being.[2]

Tentative Corporative Agencies. Four years later experimental corporations were elaborated. Acting under a law especially enacted for the purpose, Signor Mussolini reorganized the National Council of Corporations, making its membership consist of some 60 or 70 governmental and party officials and 100 representatives of the various syndical confederations. The functions of this reformed Council were declared to be pre-legislative in character; acting under the Head of the Government, who was to convoke the Council and fix its agenda, it was to formulate rules to govern relations between private enterprises which belonged to the same cycle of production, for example, the relations between milk producers and dairymen or the relations between the metallurgical industries and the metal fabricating industries. The rules thus formulated were to be without effect unless voluntarily accepted by the representatives of the industries involved, that is, of both the capitalists and the workmen, or unless subsequently sanctioned by law or decree. A Central Corporative Committee, consisting of the more important members of the National Council, some 20 in all, was authorized to perform the Council's duties in the intervals between its meetings.[3] Apparently to promote the effectiveness of the work of the Council, its membership was subdivided in January, 1931, into seven sections,[4] each supposedly representative of a major division of Italian enterprise. Each section was called a corporation. At about the same time a special corporation, having no formal connection with the Council or its seven sections, was organized to study the problems of the theater and the cinema industry. This was

[1] Decree of July 2, 1926, no. 1131, *G. U.*, July 7, 1926, no. 155, p. 2941; the organization of the ministry was further elaborated in decree of Mar. 17, 1927, no. 401, *G. U.*, Apr. 4, 1927, no. 78, pp. 1433-1444.

[2] The corporations were mentioned again in Clauses VI and VII of the Labor Charter promulgated April 21, 1927; see *G. U.*, Apr. 30, 1927, no. 100, p. 1794.

[3] Law of Mar. 20, 1930, no. 206, *G. U.*, Mar. 28, 1930, no. 74, pp. 1146-1149.

[4] Decree of the Head of the Government of Dec. 20, 1931, *G. U.*, Feb. 13, 1932, no. 36, p. 822.

known as the Corporation of the Stage.[1] None of these organs, however, achieved much more than a paper existence; and by 1933 the corporative phase of Fascism had advanced but slightly beyond the legislative formulae of 1926.[2]

Economic Depression and Public Intervention

Italian Depression Policies. At this juncture the world-wide economic crisis gave the whole idea of State intervention in the nation's economy new impetus. In Italy as elsewhere the crisis caused many an industrialist, banker, and agriculturist to become suppliants for public assistance. The answer to these requests involved most of the devices and policies which have become familiar in the West since 1930: (1) an expanded system of public works; (2) extension of public credit to private economy; (3) easing of bankruptcy and mortgage foreclosure laws; (4) regulation of capital investment; (5) devaluation of currency; (6) curbs on foreign trade; and (7) control of agricultural production.

Enti and Istituti: IMI and IRI. The more effectively to promote its interventionist policy, the State set up a bewildering variety of *"enti"* and *"istituti,"* [3] the equivalent of American "administrations" and "public corporations." One of the most important of these was the *Istituto Mobiliare Italiano* (IMI) established in November, 1931. Starting with an authorized capital of 500 million lire, its purpose was to extend intermediate and long-term credit to industrial enterprises and banks which were in financial difficulties, taking their stocks and bonds as collateral. Against this collateral the Institute was authorized to issue and sell its own bonds to the public up to an amount equal to five billion lire.[4] The bonds were guaranteed by the Government. Through the operations of the IMI the Government became possessed of the obligations of numerous private companies, in many instances to the extent of securing a controlling equity. To rehabilitate the companies thus controlled, dispose of some

[1] For this experimentation with corporative organs, see generally Pitigliani, *op. cit.*, p. 101 and *passim*.

[2] Possibly this statement should not include the Corporation of the Stage which was rather active and accomplished some reforms. Cf. Pitigliani, *op. cit.*, pp. 110-114.

[3] Some of these bodies had come into being before the depression. Among them may be enumerated: ENIT or the *Ente Nazionale per le Industrie Turistiche* for the control of the tourist trade, 1927; ENIOS or the *Ente Nazionale per l'Organizzazione Scientifica del Lavoro,* to encourage scientific management and production methods in industry, 1927; and the *Istituto per il Credito Navale,* to consolidate and help finance Italy's great merchant marine, 1928. See generally, Welk, *op. cit.*, p. 167 and *passim*.

[4] Welk, *op. cit.*, p. 168.

of their industrial securities to private interests, and generally to exercise the rights of ownership which had thus been acquired, another Institute was created in January, 1933. This was the Industrial Reconstruction Institute or IRI (*Istituto per la Ricostruzione Industriale*).[1]

Compulsory Consortiums. Efforts were also made after 1932 to compel business to amalgamate through the formation of consortiums in order to encourage co-operation between similar types of business enterprise and facilitate governmental intervention. Some of the consortiums could be formed only if a large majority of eligible concerns requested it; others could be formed whenever the Government so decreed. The consortiums were required to communicate the nature of all business policies to the appropriate ministry; at its discretion the ministry could require a change in their policies in order to bring them into conformity with the national interest. Even new factory equipment and new factory buildings could be vetoed by decree of the Head of the Government.[2]

The Corporate State Emerges

Corporativism Revived. The intimate connection between Government and enterprise thus fostered by the economic depression brought about a revolutionary change in the economic program of the regime. Comprehensive control over the entire nation's economy through a corporative organization, so formidable and revolutionary an idea in 1926, now began to seem perfectly feasible and legitimate. Industry and business had placed themselves in the position of inviting such control and justifying it. As Signor Mussolini said, "when an enterprise appeals for public funds, it obviously loses all private character and becomes a public affair, or, if you like, a social one." [3] Moreover as the depression deepened and the wage levels of the working population continued to decline during 1933 and 1934, a Leftist political gesture by Fascism became imperative. Corporativism, with its proposed legislative control of economy and its associations with the syndical institutions of the regime, had just the kind of revo-

[1] The early legislation establishing and empowering the IRI follows: decree of Jan. 23, 1933, no. 5, *G. U.*, Jan. 24, 1933, no. 19, p. 300; law of May 3, 1933, no. 436, *G. U.*, May 19, 1933, no. 117, p. 2151; law of Oct. 19, 1933, no. 1341, *G. U.*, Oct. 26, 1933, no. 250, p. 4910; decree of Head of the Government of Oct. 27, 1933, no. 255, *G. U.*, Oct. 30, 1933, no. 252, p. 4935.

[2] Law of June 16, 1932, no. 834, *G. U.*, July 25, 1932, no. 170, pp. 3478-3479.

[3] Speech on the law organizing the corporations, Jan. 13, 1934, translated and reprinted in B. Mussolini, *The Corporate State* (Florence, 1936), p. 30.

lutionary implication needed for such a gesture. The summer of 1933 accordingly witnessed a veritable barrage of pamphlets and speeches against capitalism. Signor Mussolini began to state openly that the capitalist system had come to an end; that the depression was not a crisis *in* the system but a crisis *of* the system; and that a substitute for capitalism, or, at least, for what he described as "super-capitalism," had to be found. He added that Fascism had already found that substitute in the projected corporative structure and that it was the duty of the Government to proceed forthwith towards its elaboration.[1] The net result was the enactment in February, 1934, of a law authorizing Signor Mussolini to create a complete set of corporations by decree and 22 such corporations were thereupon established. At the same time the National Council of Corporations and the Central Corporative Committee which, as we have seen, were called into being in 1930, were completely reorganized.[2] This structure lasted until January, 1939, when further changes were made. The number of corporations, however, remained fixed at 22.[3]

Elements Represented in the Corporations. The members of the corporations are drawn chiefly from the syndical organizations, employers and workmen being in principle equally represented. Most of the corporations also provide representation for the national syndicates of Professional Men and Artists, for the Italian co-operatives and for independent artisans and technicians. One corporation, that for Banking and Insurance, has a single representative from the public employees' associations. Finally each of the 22 corporations contains three representatives of the Fascist Party. The composition of the corporations thus clearly indicates that they are not merely an evolution of organized syndicalism, as contemplated in 1926 or in 1930, but that they embody many elements with a stake in the nation's economic life, even the general public, so theory has it, being represented by the party members. The Head of the Government or the Minister of Corporations serves as the nominal president of each of the 22 bodies. The actual headship of each corporation, however, normally devolves upon its vice-president, a post which

[1] Speech on the Corporate State before the National Council of Corporations, Nov. 14, 1933, and Speech to the Workers of Milan, Oct. 6, 1934, both translated and reprinted in B. Mussolini, *op. cit.*, pp. 3, 37.

[2] Law of Feb. 5, 1934, no. 163, *G. U.*, Feb. 20, 1934, no. 42, p. 869.

[3] Law of Jan. 5, 1939, no. 10, *G. U.*, Jan. 25, 1939, no. 20; text in *B. P.*, XII (Dec. 1938), pp. 111-118. The principal provisions of this law as well as the decrees since enacted to carry the law into effect are summarized in *Bollettino delle Assemblee Legislative*, series 2, XIII (July, 1939), pp. 127-130.

is invariably given to one of the corporation's three party members.

Number and Classes of Members. The corporations vary greatly in size. The smallest, that for Sea and Air Transport, has 24 members; the largest, that for Banking and Insurance, has 84. The membership of each corporation is divided unequally into active and associate groups. In some corporations the active group is larger than the associate; in others, the reverse is the case. Thus the Cereals Corporation has 30 active members and nine associate members; on the other hand the Corporation for the Chemical Trades has 46 associates and only 22 active members. Despite the inequality between the groups within each corporation, the entire membership of the corporations, numbering 1000, is equally divided into 500 active and 500 associate members. About the only distinction between the active and associate members is that the former alone are eligible to serve on the National Council of Corporations and in the new lower house of the Italian Parliament, the Chamber of Fasces and Corporations. In the internal affairs of the corporation the privileges of the two types of members are similar.

Corporations Co-ordinate Production Cycles. The membership of each corporation is so arranged as to unify the entire cycle of activity within any given type of enterprise. In some cases this means bringing together interests engaged in the production and fabrication of raw materials as well as those engaged in the distribution of raw or finished products. Thus all enterprises engaged in grain farming, in the marketing and storing of grain, in processing grain, and in selling the processed articles form a single corporation. So do all interests engaged in the production, processing, and marketing of wines and edible vegetable and animal fats. Each corporation is also classified under one of three groups or major production cycles. Group I, containing six of the 22 corporations, represents a production cycle having agricultural, industrial, and distributive aspects; group II, containing 10 more, represents a production cycle having only industrial and distributive aspects; and group III, containing the remaining six corporations, represents a cycle limited to the production and sale of various types of economic services. Although the groups have no institutional significance at present, it is not unlikely that the classifications which they represent will be used as a nuclear principle for future corporative co-ordinating organs.[1]

[1] See table on next page.

THE TWENTY-TWO CORPORATIONS

Corporation	*Active Members Chosen From*									*Associate Members Chosen From*							
	Syndical Confederations									Syndical Confederations							
	Industry	Agriculture	Commerce	Banking and Insurance	Professions and Arts	Co-operatives	Fascist Party	Other categories	Total	Agriculture	Industry	Commerce	Banking and Insurance	Professions and Arts	Co-operatives	Other categories	Total
Total	132	132	60	34	58	10	66	8	500	10	313	83	26	31	9	28	500
Group I. Agricultural—Industrial—Commercial Cycle																	
1. Cereals	4	16	4	—	1	1	3	1	30	—	4	4	—	1	—	—	9
2. Horticulture	6	16	4	—	1	1	3	—	31	2	8	4	—	1	—	—	15
3. Wines and Edible Oils	6	16	4	—	1	1	3	—	31	4	10	6	—	1	1	—	22
4. Animal Husbandry and Fisheries	4	16	6	—	2	2	3	—	33	—	10	6	—	—	—	—	16
5. Lumber and Forestry	4	8	2	—	1	—	3	1	19	—	10	6	—	2	—	1	19
6. Textiles	10	14	4	—	2	—	3	1	34	2	26	4	—	2	1	1	36
Group II. Industrial—Commercial Cycle																	
7. Clothing Trades	6	6	6	—	1	—	3	1	23	—	28	4	—	—	1	2	35
8. Metals	6	2	2	—	1	—	3	—	14	—	10	2	—	1	—	—	13
9. Machinery	8	4	2	—	2	—	3	1	20	—	28	6	—	1	2	1	38
10. Liquid Fuels	4	4	4	—	2	—	3	—	17	2	12	4	—	1	—	—	19
11. Chemical Trades	8	4	4	—	2	1	3	—	22	—	40	4	—	1	1	—	46
12. Paper, Printing and Publishing	8	6	2	—	3	—	3	—	22	—	10	4	—	2	—	2	18
13. Building and Construction	6	4	2	—	3	1	3	—	19	—	10	4	—	2	—	1	17
14. Water, Gas and Electricity	8	4	—	—	1	—	3	—	16	—	12	4	—	1	1	—	18
15. Mining and Quarrying	6	2	2	—	1	—	3	—	14	—	12	4	—	1	1	1	19
16. Glass and Ceramics	6	2	2	—	1	1	3	1	16	—	18	4	—	1	—	1	24
Group III. Service Cycle																	
17. Banking and Insurance	2	2	2	34	2	1	3	1	47	—	—	—	26	1	—	10	37
18. Internal Communications	10	2	—	—	—	—	3	—	15	—	30	4	—	1	1	2	38
19. Sea and Air Transport	12	2	—	—	2	1	3	—	20	—	12	2	—	—	—	—	14
20. Public Entertainments	4	—	—	—	3	—	3	—	10	—	20	—	—	2	—	3	25
21. Hotel Industry	2	2	6	—	1	—	3	—	14	—	2	6	—	1	—	2	11
22. Professions and Arts	2	—	2	—	25	—	3	1	33	—	1	1	—	8	—	1	11

National Council and Central Corporative Committee. The 22 corporations supplement and are subordinated to the National Council of Corporations and the Central Corporative Committee, two corporative bodies which, as we have seen, were created in 1930. The National Council is now composed of the 500 active members of the 22 corporations and of such members of the Central Corporative Committee as are not included in the roster of any of the 22 corporations. The Central Corporative Committee now consists of about 50 individuals, including the principal Ministers of State, certain under-secretaries, the National Secretary, Administrative Secretary, and vice-secretaries of the Fascist Party, the presidents of the nine syndical confederations and of the National Institute of Co-operatives, one party representative from each of the 22 corporations, and several other dignitaries.[1] Signor Mussolini is presiding officer of both the National Council and of the Central Corporative Committee, although meetings of the latter body are also convened with the Minister of Corporations in the chair.

Powers of Corporate Organs. Despite the elaborate character of Italy's new corporate structure and the implication of economic self-government which it conveys, the authority committed to the various organs is essentially advisory. Individual corporations may adopt resolutions on a variety of matters falling within the category of enterprise they respectively represent. These resolutions may relate to the price structure, to marketing conditions, production standards, plant management, and similar matters. Such advice, however, must first be sought by competent Ministers of the Government and the request for it approved by the Head of the Government. Moreover, to go into effect, these resolutions must ordinarily be incorporated in a decree or statute, although occasionally some may be adopted voluntarily by the economic interests involved. Through committees of its own members, a corporation may also attempt to conciliate collective labor disputes among its affiliated syndical associations. If this conciliatory function develops, the various corporations may well relieve the Ministry of Corporations of similar activity. The collective labor contracts of syndical associations and other syndical activities now require the formal approval of the corporations with which the syndicates may be affiliated. Finally advice may be sought by the Government on almost any subject within the field of a corporation's competence. Practically every action taken

[1] Decree of Dec. 27, 1934, *G. U.*, Jan. 11, 1935, no. 9, p. 131.

by an individual corporation must secure the previous authorization or the ratification of the National Council of Corporations or of the Central Corporative Committee which since April 18, 1935, has been authorized to act for the National Council in all cases. The National Council, or the Central Corporative Committee acting for it, also have their own investigatory and advisory functions on economic questions of national importance committed to them by law or, from time to time, by the Government.[1]

The Corporative Mechanism Not Autonomous. Fundamental to an understanding of the constitutional position of the corporate structure is its utter dependence upon the party, the Government, and particularly upon the Head of the Government. It was by a decree of the latter official that each of the corporations was brought into being; and any of them may be reorganized or even suppressed by the same authority at any time. Members of the corporations are in most cases appointed directly by the officers of affiliated associations, such as the syndical organizations; these officers, however, are usually direct appointees of the Head of the Government and hold their posts at his pleasure. The three party members on each corporation are appointed by the party's National Secretary and, as already noted, one of them invariably serves as vice-president of his corporation. The president of each corporation is the Minister for Corporations although the Head of the Government may, as a matter of right, take his place at any time. The Central Corporative Committee is made up entirely of Mussolini's direct appointees or of persons whom Mussolini has appointed to other governmental positions; and the Committee's presidency, as well as the presidency of the National Council of Corporations, devolves upon Mussolini. Before a corporation may proceed to deliberate upon its agenda, it must secure the approval of the Secretary of the National Council of Corporations, of every Minister to whose jurisdiction the subject matter of the agenda may relate, and of the Head of the Government. Finally, as already pointed out, practically every resolution of a corporation, of the National Council of Corporations, or of its Central Corporative Committee, must secure the assent of the Head of the Govern-

[1] For these powers see law of Mar. 20, 1930, on the Reform of the National Council of Corporations, already cited; law of Feb. 5, 1934, on the Establishment of the Corporations, also cited previously; and the summary of recent changes in the corporative structure in *Bollettino delle Assemblee Legislative*, series 2, XIII (July, 1939), pp. 129-130.

ment and be incorporated into law or decree in order to become effective. All this serves to indicate how very far indeed Italy's corporate structure is removed from *bona fide* economic self-government. Like every other governmental and quasi-governmental institution in Italy today, the corporate mechanism is an appanage of dictatorship.

The Corporate Structure Matures

New Stimuli to State Control. Since the formation of the definitive corporate structure, the Fascist Government has pursued relentlessly its policy of extending public control over economic life. The original stimulus to such a policy was weakened somewhat in 1935 as the economic crisis grew less severe. Further stimulus came, however, as the nation began to prepare in that year for the Ethiopian War. Then in 1936, as a result of that War, came the imposition of economic sanctions upon Italy by the League of Nations. To the protagonist of State control this was a godsend since, to protect the nation's economic system against the effect of sanctions, the Government had to establish minute controls over foreign trade. Moreover sanctions gave the people of Italy a striking example of the apparent necessity of a policy of national self-sufficiency or autarchy, and of the governmental planning incidental to such a policy. Currently the problem of maintaining Italy's precarious neutrality in the European War, the effort to mobilize national resources for a possible intervention in that war, and the wish to exploit newly acquired African territory and the recently conquered Kingdom of Albania, give added weight to every suggestion for additional public controls.

Government and Industry. In the field of industry, Fascism has now definitely committed itself to a policy of governmental participation in the ownership and management of private enterprise. The Industrial Reconstruction Institute or IRI, created in 1933 as an emergency body, was rechartered on a permanent basis in 1937 and now serves as a public holding corporation to exercise the Government's rights as a majority security holder in practically every key industrial enterprise in the kingdom. These enterprises include the whole of the nation's merchant marine, now consolidated into four great non-competing companies. They also include the three great marine construction companies, in which the IRI holds over 50 per cent of the capital shares, and the four leading iron and steel companies. In addition IRI is

the majority stockholder in concerns producing aircraft, hydro-electric power, chemicals, cellulose, and synthetic rubber. The capital investment represented by the portfolio of IRI amounts to nine billion lire. Under its new charter IRI continues its earlier service as a reservoir of public credit for such private industry as the Government wishes to favor. Advances for this purpose made by the Institute or by the three banks which it controls (*Banco di Roma, Commerciale Italiano* and *Credito Italiano*) also total approximately nine billion lire.[1] Through the Ministry of Finance the Government continues the policy inaugurated earlier of compelling certain businesses to amalgamate; and through the Employers' Syndical Confederation for Industry, it determines if and when trade associations, limiting production and competition, may be formed.[2]

Banking. Since 1936 great changes involving increased public control have occurred in the banking field. The Bank of Italy has lost its former private character and given up its discount and commercial functions. It is now a great public corporation, the focal point of the national banking structure. Its chief executive officer is appointed by the Government and the majority of its directors are elected chiefly by other banks, which also control most of its stock. Attached to the Bank of Italy and controlled by a committee of the Council of Ministers of which Signor Mussolini is chairman, is a board of inspectors which exercises general supervision over all the nation's banks. Acting through the board of inspectors, the Committee of Ministers can direct how the nation's private savings shall be used, and virtually require that they be invested in projects which promote the general economic policy of the Government.[3]

Foreign Trade. Foreign trade and the use of foreign exchange are regulated by the new Ministry for Foreign Trade and Exchange set up in 1937. Proposals to import must be approved by this ministry before foreign exchange to pay for the importation can be secured, such exchange being allocated to authorized importers by commercial banks on authority of the Ministry. The object of this policy is to reduce Italy's traditionally unfavor-

[1] Cf. *Outline Studies,* series II, no. 6 (Italian Library of Information, New York, June, 1939), pp. 25-26; also statement of the Minister of Finance of May 23, 1939, in *Business and Financial Report* of the Fascist Confederation of Industrialists (Rome, June, 1939).

[2] *Outline Studies,* series II, no. 6 (Italian Library of Information, New York, June, 1939), p. 28.

[3] *Outline Studies,* series II, no. 5 (Italian Library of Information, New York, May, 1939), pp. 27 ff.

able trade balance and facilitate Fascism's program of national self-sufficiency.

Agriculture. Public intervention in the field of agriculture since 1936 has resulted in the formation of central control committees to manage national pools of such staples as wheat, other cereals, hemp, wool, and raw silk. The control committees are appointed by the Head of the Government. At prices fixed by the control committees on the basis of prospective crops and existing stocks, these staples, or title thereto, are delivered to the national pool centers by the producers. Distributors and processors must then secure their requirements from the control committees at fixed prices. Special credit banks finance this system.

Recent Activity of the Corporations. Even a cursory glance at the activities of the organs of the corporate structure indicates that they have played some part in these and similar developments. Lack of space obviously prevents an extended examination of these activities and only a few of the more significant ones may be noted. The Corporation for Sea and Air Transport has considered such subjects as the collaboration of the shipping industry in expanding exports, the economic position of the cargo carrying fleet, and the co-ordination of air transport with other transport facilities. The consolidation of the Italian merchant marine in 1936 into the four great companies already mentioned is partly credited to this corporation's initiative. The Horticulture Corporation has been particularly interested in price and production controls for sugar, citrus fruits, and vegetables. The highly important Chemical Trades Corporation has sounded out the possibilities for chemical plant expansion and the more extensive use of native fuels. The Corporation for Metals is credited with a major role in the recent merger of the nation's iron and steel producers. It has also sought ways and means of increasing the production of aluminum, of which raw ores are plentiful in Italy, and of substituting that metal for copper. The Banking and Insurance Corporation has been active in promoting banking consolidation and reform, thereby laying a part of the foundation for the banking legislation of 1936. The market position of agricultural staples and the regulation of their production have been the principal items on the agenda of the Cereals Corporation. Most active of all the corporative organs has been the Central Corporative Committee. It has served as a sort of corporative clearing house, its committees having selected and elaborated the more feasible of the suggestions coming from

the various corporations and passing them on to the political authorities for action.[1]

Auxiliary Corporate Organs. As the corporate structure matures, the Fascist Government is slowly elaborating it and providing it with auxiliary organs. Notable in this respect has been the growth since 1936 of special committees within each corporation, and within the Central Corporative Committee as well, for the discharge of investigatory and administrative duties assigned by the Government. Recently, indeed, committees of this nature were authorized to perform the advisory functions formally assigned to a corporation as a whole.[2] Mention may also be made in this connection of the regional organs of the corporative structure, the so-called Provincial Councils of the Corporations, one of which exists within each of the 98 provinces. These have been known by various titles, the nomenclature having been changed at each stage of corporate evolution. When established in 1926, they were called Provincial Economic Councils; at the time they replaced the former chambers of commerce and agriculture.[3] In 1931, they became Provincial Councils of Corporative Economy.[4] Their present title was given them in 1937.[5] Composed of provincial party, Government, and syndical officials, they are assigned important price fixing functions and are supposed to take care of corporative matters of a local character. Most of their functions are discharged by committees.

Integration with Political Organs. Fascism is also integrating the corporate structure more thoroughly with the regular political and administrative mechanism of the State. Some of the special institutions established during the depression period have been discontinued and their functions transferred to appropriate corporations. This has happened in the case of the National Silk Institute, organized in 1926 to promote the silk industry. Its activities have now been assigned to the Textile Corporation. Similarly the National Rice Institute, organized in 1931 to aid the rice growers, has bequeathed its activities to the Cereals Corporation. Each of the corporations with an industrial jurisdiction

[1] This material has been derived chiefly from *News Notes on Fascist Corporations* published monthly by the Ministry of Corporations, Rome, and from the *Outline Studies* of the Italian Library of Information, New York, especially series II, no. 6, June, 1939, entitled "Corporative Agriculture and Industry."

[2] H. A. Steiner, "Fascist Italy's New Legislative System," *Amer. Polit. Sci. Rev.*, XXXIII (June, 1939), p. 463.

[3] Law of Apr. 18, 1926, no. 731, *G. U.*, May 10, 1926, no. 108, pp. 1978-1985.

[4] Law of June 18, 1931, no. 875, *G. U.*, July 14, 1931, no. 160, pp. 3474-3477.

[5] Decree law of Apr. 28, 1937, no. 524, *R. U.*, 1937, II, p. 1217.

has become invested with the function of rejecting or approving petitions for plant expansion within the field of its competence, a prerogative which, before 1937, had been centralized in a special committee attached to the Ministry of Corporations. More significant still is the prerogative recently given the Banking and Insurance Corporation to elect 2 of the 15 directors of the Bank of Italy which, as explained previously, has become the nation's great central bank.

The Corporations and Parliament. The most important evidence of growing correlation of the corporative mechanism with the political mechanism of the State is to be discerned in the formation of the new lower Chamber of the Italian Parliament, the Chamber of Fasces and Corporations. As already indicated, by far the largest contingent of the members of this new body is derived from the corporations. It was for the purpose of thus merging corporative and political representation that the entire corporate mechanism was revised in 1939.[1] The text of the law on the new Chamber also made provision for the formal presentation of the resolutions or norms of the corporations to Parliament or its appropriate standing committees for their approval. Before being thus presented, these resolutions or norms must be approved by the Central Corporative Committee and by the Head of the Government.[2] Signor Mussolini has called this entire development the final phase of Fascist constitutional reform.

A Corporative Economic System

Economic Totalitarianism Becomes Corporative Economics. The scope of the authority assigned the corporate organs and the increasingly important position they assume in the Fascist governmental mechanism may therefore justify the extension of the corporate nomenclature to the entire system of publicly controlled economy in Fascist Italy and to the objectives that economy is designed to attain. At any rate such is current Fascist usage. The totalitarian State, in so far as it relates to economics is now the Corporate State; and the institutions and policies which Fascism has inflicted upon the economy of the nation now constitute the Corporative Economic System. In many respects this system differs little from the economic collectivism which democratic polities have evolved during the past two decades.

[1] See p. 691.

[2] Art. 19; text in *B. P.*, XII (Dec., 1938), pp. 76 ff. See also *Bollettino delle Assemblee Legislative,* series 2, XIII (July, 1939), p. 129.

The more distinctive attributes of Corporative Economy may be summarized as follows: (1) rigid state control over labor organizations and employment; (2) a price structure from which the influence of a free market has been almost entirely eliminated; (3) extensive governmental participation in the actual ownership and management of all large scale enterprise; (4) unusual emphasis upon amalgamation and consolidation of private enterprise and numerous compulsions to bring such enterprise into immediate conformity with public policy; (5) a strict governmental control over every aspect of foreign trade and exchange; and (6) emphasis upon production for national power and self-sufficiency rather than upon production at lowered cost and the social distribution of income and wealth. There is one other distinctive attribute, already commented upon in this chapter, and that is the complete absence of self-government within the system and of spontaneous initiative coming from those whom the corporative system regulates. Whether the organ of control be a syndicate, a corporation, or some orthodox unit of government, those who wield power in it, or at least those who have the controlling influence, are invariably appointees of the small coterie of Fascist oligarchs, usually, in fact, of the Head of the Government. Whatever be its form, the Corporative Economic System is as authoritarian in its processes as any other institution of the Fascist regime.

CHAPTER VI. THE CONSCRIPTION OF LIBERTY

Moral Totalitarianism

Fascist War on Free Institutions. The preceding chapter has indicated that Fascism proceeded towards monopolistic control of Italian economic life with some hesitation and attained such control only recently. Similar hesitation was not displayed in extending such control to the sphere of moral, cultural, and civic liberty. Towards the destruction of the free institutions in this field, Fascism moved with startling swiftness. While Premier Mussolini, in 1923, was still giving the impression that he wished to placate Parliament and govern in collaboration with the nation's elected representatives, and while the Finance Minister of his first Cabinet was proclaiming the virtues of tariff and tax reductions and the withdrawal of the Government from business, Fascist Blackshirts were accelerating the tempo of their local guerrilla warfare against the non-Fascist press, the headquarters of the opposition parties, and the Socialist and Catholic labor organizations and co-operatives.[1] For these institutions there was to be no tolerance. On the contrary for them, as the Fascists phrased it, "life was to be made impossible." If before January, 1925, there were Italians who, like Giolitti, thought that Fascism would stop short of an outright political monopoly, that hope ought to have been dispelled by Fascism's early effort to destroy moral and cultural liberty, the very basis of limited government.

War on Liberty "Legalized." As the new regime became more firmly fixed in the saddle, the technique of its attack on the free institutions and activities changed. After 1923 *squadrismo* and vigilantist activity were supplanted or supplemented by hostile legislative decrees. The first decree for the control of the press was elaborated in July, 1923;[2] but parliamentary opposition still being rather formidable, the decree was not actually

[1] Cf. G. Salvemini, *The Fascist Dictatorship in Italy* (New York, 1927), pp. 122 ff.

[2] Decree of July 15, 1923, no. 3288, applied by terms of decree law of July 10, 1924, no. 1081, and converted into law Dec. 31, 1925, no. 2309, *G. U.*, Jan. 5, 1926, no. 3, p. 23.

published and put into operation until July, 1924. The first decree adversely affecting the privileges of the free associations was announced on January 24, 1924.[1] A series of decrees during the next two years, similar in purport to these early ones, muzzled all newspapers and journals hostile to Fascism, restricted personal liberties of various sorts, and brought about the formal dissolution of opposition parties, non-Fascist syndicates, and professional and fraternal organizations.

Free Institutions Replaced by Fascist. For the voluntary institutions which it suppressed, Fascism substituted its own. The opposition press which had not permanently suspended publication was forced to change ownership or management and come out thereafter under the direction of loyal Fascist partisans. The membership of the Socialist and Catholic syndicates, as we have noted elsewhere, went over *en masse* to the Fascist syndicates; Fascist professional and trade associations replaced the free organizations which had formerly existed; and the youth organization (*Balilla*) and the leisure time organization for workmen (*Dopolavoro*) were created. Even veterans' associations, patriotic groups, athletic clubs, fraternal associations, and mutual benefit societies found it desirable to incorporate the word "Fascist" in their respective titles and place themselves under the protection and supervision of the governmental or party authorities. In short institutions and organizations under the auspices of Government or party pre-empted every field in which the free associations had formerly been active.

Meaning of Moral Totalitarianism. The net result of these developments has been the complete destruction of voluntary institutions for civic, cultural, and moral purposes. For all such institutions there are now Fascist-inspired and Fascist-controlled enterprises, all of which are unashamedly exploited for the regime's social and political ends. At the same time ideas or doctrines not officially approved, and the exercise of personal liberties which are regarded as potentially inimical to the regime, are ruthlessly suppressed. The substance of many of the decrees which elaborated this system of moral control were subsequently brought within the scope of the Public Security Act, one of the most anti-libertarian statutes ever enacted, which was promulgated as a decree of the Government on November 6, 1926.[2]

[1] No. 64, *G. U.*, Feb. 6, 1934, no. 31, p. 587.
[2] No. 1848, *R. U.*, 1926, VIII, p. 7945; text also appears in *G. U.*, Nov. 8, 1926, no. 257, p. 4822.

Many of the same provisions found a place later in the new Penal Code, promulgated in 1931. Both the Security Act and the Penal Code also make ample provision for the system of police surveillance and discretionary administrative power over personal liberty which Fascism's moral monopoly requires.

The Press

Licensing the Daily Press. The results of this policy of assimilation are vividly portrayed by the present condition of the Italian press. Journalism in Italy has been a publicly regulated enterprise since 1926, every director or manager of a newspaper being required to secure a license from the State before he can set up a printing establishment. Licenses are issued by the royal procurator, a provincial official of the Ministry of Justice, to such applicants as can satisfy the authorities that they are financially responsible and politically trustworthy. No guarantee exists that permission, once extended, will not be recalled, since revocation of the license is always within the discretion of the official who issued it. In case of revocation, moreover, the director of a journal can appeal for redress only to the superior administrative officials in the Ministry of Justice and ultimately to the Council of State, the chief administrative court. Since the Council of State has lost whatever judicial independence it once had, there is little likelihood that it would take a position opposed to the decisions of the administrative officials who revoked the license in the first instance.[1] As a matter of fact the Government has seen to it that the important papers are all controlled by loyal servants of the party and exerts over them virtually the same kind of supervision that it exerts over the organs of the party or the civil servants. In the early days of the regime, newspaper directors were shifted about from journal to journal much as the prefects were shifted from province to province, as political exigency or the personal preference of the authorities dictated.[2]

Journalists' Registers. Managers or directors are not the only members of a newspaper's staff who must secure governmental approval. The same rule applies to all employees from the rank of editor to that of apprentice. Before these may be hired, their names must appear upon the official "journalists' registers." Such registers are maintained in the nation's largest cities and in the

[1] For the more important licensing arrangements see law of Dec. 31, 1925, no. 2308, *G. U.*, Jan. 5, 1926, no. 3, p. 23; also law of Dec. 31, 1925, no. 2307, *R. U.*, 1926, II, p. 31.

[2] Cf. F. L. Ferrari, *Le Régime fasciste italien* (Paris, 1928), p. 164 (n.).

political center of each of the 98 provinces. The registers not only indicate what persons are eligible to serve in a journalistic capacity but in what specific capacity they are eligible to serve.[1] The regional Fascist press syndicates are technically responsible for the keeping of the registers, although the actual duties of entering names upon them and keeping the entries up to date devolve upon committees of these syndicates.[2] As might be expected, no persons "who have engaged in public activity contrary to the interests of the nation" are eligible for inclusion in the Fascist press registers; and persons who may be accused of anti-Fascist activities must be stricken off the registers at any time on demand of the prefect.

Press Censorship. Supervision of the personnel of the press is but one aspect of Fascist journalistic control. Equally effective is the system of political supervision over what is printed or published. The chief weapons first elaborated for this purpose were the various censorship regulations, most of which were adopted between 1924 and 1926. These regulations still require the prefects to confiscate the issues of any paper whose director prints matter deemed to be "false, tendentious or misleading" or calculated to "inspire class hatred or contempt of the government." [3] With the passing of time the censorship has become more elaborate. A decree adopted in 1934, for instance, forbids the publication of any information whatsoever about the military or naval forces unless the information has first been released by the competent authorities. The decree even censors publication of news about accidents in munitions factories or along strategic railway lines; it also forbids revelations on the viewpoint of the Government on pending international negotiations.[4]

The Press as a Propaganda Instrument. Far more characteristic of Fascist journalism today than these early censorship regulations are the official efforts directed towards exploiting the various news organs as instruments of State propaganda. Activities with this end in view are most elaborately organized and involve the services of the Ministry of Popular Culture, organized in 1937, and innumerable Government and party press bureaus. These agencies censor and color the domestic and foreign news which the newspapers are to publish and they issue directions

[1] Decree of Feb. 23, 1928, no. 384, *G. U.*, Mar. 13, 1928, no. 61, p. 1106.
[2] See art. 7 of law of Dec. 31, 1925, no. 2308, *R. U.*, 1926, II, p. 34; also art. 34 of law of Nov. 21, 1929, no. 2291, *R. U.*, 1930, I, p. 306.
[3] Decree law of July 15, 1923, no. 1055, *R. U.*, 1924, IV, p. 3034.
[4] *New York Times*, Nov. 25, 1934, p. 27.

as to the typographical treatment which such news shall receive. They also convey suggestions as to what news in the daily grist the Government wishes to have emphasized, what news it wishes discounted or ignored, and even what editorial policies it wishes to have pursued. Official instructions are delivered directly to the more important journals; for the provincial publications the instructions are relayed through the office of the prefect or through local news bureaus of the party.[1] A law of 1932 requires all newspapers as well as other types of publication to deposit copies of whatever they print or publish with the prefect of the province in which they are located.[2] This requirement offers ample opportunity for checking the loyalty of even the most isolated and insignificant journal.

Italian Journalism Today. Under such a regimen it is hardly surprising that the Italian press under Fascism has lost almost every vestige of independence and originality and has degenerated into a sort of multi-headed political sycophant. Great newspapers of world-wide reputation, such as *Corriere della Sera* of Milan, *La Stampa* of Turin, *Il Giornale d'Italia* of Rome, and *Il Mattino* of Naples, once distinguished for literary merit, for original and stimulating editorial policy, and for the critical influence they wielded over Italian political opinion, have become little more than house organs of the Government and the party. They are as uncritical and as effusively laudatory of the aims and efforts of the governing oligarchy as Mussolini's own *Popolo d'Italia* or of the personal organs of some of the leading politicians.[3] This metamorphosis of the function of the press is one of the most baneful effects of the present dictatorship. As a direct consequence the public has lost its most responsible instrument for inspiring and crystallizing opinion while the Government has denied itself a potentially valuable political counsellor and a much needed source of moral restraint.

Other Publication Activities. The controls erected over the daily press have been extended, in one form or another, to every activity related to printing and publishing. Directors of periodical publications and reviews, as well as of newspapers, must be licensed; and the personnel of this sort of publication must likewise appear upon the journalists' register. Licenses are re-

[1] See my essay on "State Propaganda in Italy," in *Propaganda and Dictatorship,* H. L. Childs, ed. (Princeton, 1936), pp. 36 ff.

[2] Law of May 26, 1932, no. 654, *R. U.,* 1932, II, pp. 1709 ff.

[3] For a description of the press under Fascism by an American journalist see Albin E. Johnson in *Editor and Publisher,* June 30, 1934.

quired of manufacturers and publishers of any kind of occasional printed matter, including books, pamphlets, occasional literature, and lithographic or photographic reproductions. To engage in a publishing venture of this sort, permission must be secured from the local police officials. Such permission once granted may be revoked whenever the authorized firms or persons violate any instructions which the authorities have issued "in the public interest" or produce any matter considered politically objectionable.[1] For some time, moreover, the party press offices have exercised a censorship over the publication of books by "inviting" authors to submit manuscripts or proofs on political subjects.[2] Even the sale and distribution of printed matter requires police authorization; failure to secure it makes the offender liable to the severest penalties. Finally attempted distribution or the mere possession of printed matter, the contents of which are deemed by the authorities to be derogatory of the national dignity or offensive to the Government, are classified as high misdemeanors entailing possible imprisonment as punishment.[3]

Public Entertainment

Stage and Cinema. Enterprises devoted to public entertainment have come in for their own brand of political control even though their activities are less likely to affect public opinion, particularly political opinion, than the printed word. The legitimate stage has been subjected to police supervision since 1926. No production, choreographic, musical, or dramatic, can be presented until the prefect has been notified and that official or his subordinate has formally decided that the proposed production does not violate public morality or "public order."[4] Censorship of the legitimate stage, particularly for political reasons, has been considerably strengthened since 1931.[5] Motion pictures must pass muster from a political as well as a moral viewpoint before a Government censorship board. The board consists of representatives of the local police, of the public, and of the Ministry of Popular Culture. All films, most of which are still imported, must be submitted to this board for revision before they

[1] Art. 111 of the Public Security Act of Nov. 6, 1926, no. 1848, *R. U.*, 1926, VIII, p. 7945.

[2] C. Haider, *Capital and Labor under Fascism*, Columbia University Studies in History, Economics and Public Law, no. 318 (New York, 1930), p. 131.

[3] Arts. 112, 114 of Public Security Act of Nov. 6, 1926, no. 1848, *R. U.*, 1926, VIII, p. 7945.

[4] Art. 72 of the Public Security Act of Nov. 6, 1926, cited above.

[5] Law of Jan. 6, 1931, no. 599, *R. U.*, 1931, III, p. 2615.

can be projected in the 3600 odd cinema emporiums in the kingdom.[1] Both the stage and the films are mediums favored by the party-sponsored *Dopolavoro* organization for purveying entertainment and propaganda to the masses. Recently, moreover, the Government has itself entered the film industry through the establishment of a quasi-public institute known as *L'Unione Cinematografica Educativa* (LUCE). The directorate of this Institute is nominated by the Head of the Government and consists chiefly of representatives of appropriate national ministries and of the party. The Institute, supplied largely with public capital, is charged with the task of producing short films which shall promote civic education, national loyalty, and the maintenance of cultural standards. By law every motion picture theater in Italy is compelled to include one of these short films in its daily program and to pay a stipulated rental for it to the producer.[2]

Radio. Radio, newest of public entertainment mediums, is under somewhat less rigid supervision than stage and cinema. In 1927 a monopoly of the broadcasting privilege in Italy and the colonies was conferred for a period of 25 years upon a quasi-public corporation known as the *Ente Italiano per le Audizioni Radiofoniche* (EIAR). Capital of some ten million lire has been obtained, chiefly from private sources, and the *Ente's* revenue is secured from license taxes upon private receiving sets, of which there are upwards of half a million, and from an excise tax on radio accessories. Some 50 transmission stations, of which the most powerful is one recently built near Rome, constitute the principal centers for broadcasting. Supervision over radio programs is intrusted to a national board of control appointed by the Minister of Communications. This board consists of representatives of the Fascist Confederations of Industry, Commerce, and Agriculture, of various Fascist syndicates devoted to the arts and professions and of the Fascist Council of Public Instruction. The President of the board must always be a member of Parliament.[3] The board's powers are apparently extensive enough to control the tenor of all the broadcasts; and since the *Ente* and the

[1] Art. 75 of the Public Security Act of Nov. 6, 1926, cited above.

[2] Decree law of Jan. 24, 1929, no. 122, *R. U.*, 1929, II, p. 1892, converted into law, June 24, 1929, no. 1048, *R. U.*, 1929, V, p. 5030. For activities of LUCE see *Annali di statistica,* series VI, vol. 15, entitled *Statistica di alcune manifestazioni culturali italiane nel periodo 1926-1930* (Rome, 1933), p. 100; see also my essay entitled "State Propaganda in Italy," in H. L. Childs, *op. cit.*, pp. 38-39.

[3] See decree law of Nov. 17, 1927, no. 2207, *R. U.*, 1927, IX, p. 9275; also law of Apr. 5, 1928, no. 1232, *R. U.*, 1928, IV, p. 3778.

Government provide the radio programs, there is little likelihood that anything will be transmitted which would upset the equilibrium of the public authorities. Nevertheless the law makes the usual proscription of information which is false or "tendentious" and of information which might be dangerous to the interests of the State.[1]

Civic Associations

Political Organization. Various types of associations, political, economic, and moral, have shared the fate which Fascism has meted out to the press and the other instruments for the dissemination of information. Political association is, of course, now a monopoly of the Fascist Party and its auxiliaries, exploited by them in a manner which has already been described.[2] Legal regulations aimed at protecting that monopoly are most thoroughgoing. Efforts to revive any of the former parties, or quasi-political groups such as the Free Masons, give rise to severe penalties. Those accused of leading a movement for their revival may be punished by imprisonment for upwards of 10 years; those who actively assist efforts at a revival or who propagate the doctrines and programs of the dissolved parties may be adjudged guilty of a high misdemeanor.[3]

Economic Association. In the economic field the publicly recognized Fascist syndical associations for employers, employees, and for persons engaged in the arts and professions, which have been previously described, are supreme and brook no rivals. It is true that, so far as the law is concerned, independent or *de facto* syndicates, that is, syndicates not belonging to the publicly recognized syndical structure, may still be formed.[4] No such syndicates, however, exist at present; nor is there any likelihood that any will come into being. The mere fact that the recognized syndicates are alone authorized to bargain collectively on matters affecting employment and generally to represent the collective interests of the producing classes would render *de facto* syndicates quite superfluous. The legal requirement that all persons actively engaged in any economic pursuit, whether as owner or worker, must pay dues to the recognized Fascist syndicates of

[1] Arts. 24 and 28 of decree law of Aug. 13, 1926, no. 1559, *G. U.*, Sept. 16, 1926, no. 216, p. 4114. For the development of radio in Italy see *Annali di statistica*, cited above, pp. 101 ff.

[2] See pp. 656-670.

[3] See Law for the Defense of the State of Nov. 25, 1926, no. 2008, *R. U.*, 1926, IX, p. 8880.

[4] Law of Apr. 3, 1926, no. 563, *G. U.*, Apr. 14, 1926, no. 87, p. 1590.

their economic category, would also tend to discourage the development of *de facto* syndicates. If these two obstacles were surmounted, there is always the grave and quite certain danger that the *de facto* organizations would incur the active distrust of both local public officials and the local syndical officials, a distrust which would soon lead to their dissolution on one legal pretext or another.[1]

Other Associations. As to other types of association, party and State have again pre-empted the field. As noted elsewhere,[2] Fascist party auxiliaries monopolize youth organizations, public employees' associations, the cultural activities of the working class, and a variety of patriotic, propagandist, and athletic organizations. Government, party, and the syndicates control welfare and social service activities. The opportunity which remains for spontaneous association is therefore rather limited. When any privately sponsored association is formed, it is, moreover, constantly at the mercy of the local authorities, who assume a virtual guardianship over it. The police have the right to demand information as to its constitution, membership, and policies at any time, and to make that demand as often as they like. Failure to comply may lead to the arrest of the association's officers and to its own dissolution. The prefect, moreover, has the power to dissolve any association on the ground that its policies and practices are running counter to the best interests of the State. At the same time he may seize whatever property the association possesses and sequester it.[3]

Personal Liberty

Freedom of Opinion. The absorption by the State of the organized cultural life of the nation and its exploitation for political ends has necessarily entailed the virtual destruction of personal liberty. Such liberty, after all, can hardly exist if avenues for its normal expression are closed. The Fascist Government, however, has not been content to strike at personal liberty merely in this indirect manner, but has sought to prohibit it directly. The right of opinion, for instance, has been elaborately circumscribed by law and decree. Popular gatherings to discuss topics as far removed from politics as sport or science are allowed

[1] See decree law of Jan. 24, 1924, no. 64, *G. U.*, Feb. 6, 1924, no. 31, p. 587, for possible pretexts.

[2] See pp. 663-666.

[3] Arts. 214-215 of Public Security Act of Nov. 6, 1926, no. 1848, *R. U.*, 1926, VIII, p. 7945; also art. 1 of law of Nov. 26, 1925, no. 2008, *R. U.*, 1926, IX, p. 8880.

to be held only at the discretion of the police. These authorities may censor the agenda of such gatherings and even prohibit them altogether. One of the most notorious police prohibitions of a scientific gathering occurred in the spring of 1926 when the National Congress of Philosophers, meeting at Milan, was summarily dissolved because its agenda had occasioned official displeasure.[1] Legislation since that year requires the sponsors of a scientific, athletic, or philanthropic meeting, or of a meeting to commemorate persons or events, to secure a permit from the prefect at least one month in advance of the meeting. The permit cannot be issued until after various local authorities, including the provincial party secretary, the podestà, and the local military commander, have had an opportunity to scan the proposed agenda and the prefect has himself been satisfied that the meeting will not violate the "national conscience." [2] The Public Security Act makes these regulations even stricter. Under that Act, the police are empowered to prohibit any kind of meeting, whatever its purpose, if they think it might endanger public health, morality, or public order, or injure the dignity or prestige of the Government or of any of its officials. Under the Security Act the police can even prohibit a purely private gathering if they feel that the number of persons invited to such an affair, the proposed agenda, or the place of the meeting warrant them in giving it the status of a public meeting.[3]

Freedom of Movement. Elementary freedom of movement has also been curtailed as a result of Fascism's fear of political antipathy. An Italian citizen traveling outside his own commune must carry an identification card which can be issued only by the local police of the traveler's place of domicile. Without such a card he cannot secure accommodations at hotels, pensions, or other public places. Anyone who does not carry a card and who "creates suspicion by his conduct" may, moreover, be ordered by the police to return to his own commune at once. The administrative action of the police in all these matters is legally final, there being no appeal to a judicial authority to review police discretion or annul it.[4]

Restriction of Emigration. Movement across the frontier is also restricted. Passports can be secured only with difficulty be-

[1] For this incident see *Current History* (Jan., 1931), pp. 534 ff.
[2] Decree law of Aug. 6, 1926, no. 1486, *G. U.*, Sept. 7, 1926, no. 208, p. 3995.
[3] Public Security Act of Nov. 6, 1926, cited above. See also W. Bolitho, *Italy under Mussolini* (New York, 1926), pp. 100-101.
[4] Arts. 158-159 of the Public Security Act of Nov. 6, 1926, cited above.

cause of Fascism's desire to keep its man power at home and its fear that its domestic enemies will find sanctuary in a foreign State and, thus protected, will no longer keep silent. Those who essay to emigrate without a passport subject themselves to possible fine and imprisonment, the first penalty being raised to a maximum of three years and the second to a maximum of 20,000 lire if it can be proven that the motive which prompted the attempted emigration was political.[1] Such proof, incidentally, would not be difficult to secure, since attempted emigration without permission is itself likely to be construed as an anti-political act.

Education

The Gentile Reform. In Italy, as in France, the State, the Church, and occasionally private organizations had all taken a hand in creating the elementary and secondary educational system in the years before the World War. The maintenance of the public schools was the responsibility of the communes, although the national budget bore most of the expense, particularly in the case of the more backward regions. The private schools were chiefly maintained by the religious orders or congregations and, though far less numerous, had on the whole a better reputation than the publicly supported institutions. Towards this school system Fascism at first displayed an unusually tolerant attitude. This attitude was apparently due chiefly to the fact that the regime's earliest action on the school question, known as the Gentile reform, came in 1923, in a period when the Catholic Populist Party was still a political force of moment. From its inception in 1919, this party had crusaded vigorously for freedom of teaching and for the right to maintain and enlarge existing Catholic elementary schools. The Gentile reform heeded these demands and left the private schools largely in *statu quo,* although their students were thenceforth required to take the State examinations for diplomas and certificates. In the case of the public schools, the Gentile reform strengthened the control of the central Government, increased the subsidies from the national budget, reinforced attendance laws, traditionally lax in some parts of the kingdom, and elaborated a curriculum emphasizing liberal, at the expense of technical, studies and substituting a

[1] Art. 160 of Public Security Act of Nov. 6, 1926, cited above.

more experiential and objective type of training for the former emphasis upon syllabi and factual drill.[1]

Growing Centralization. But the trend of educational policy in Italy since 1923 has hardly been consistent with the major implications of the Gentile legislation. Centralized control has been greatly expanded. Legislation in 1926 virtually deprived the communes of their remaining authority over public schools and all but transformed private schools into public institutions. The latter are now required to observe State standards affecting qualifications of teachers and teaching methods. They must also use State textbooks. Technical and industrial schools, theretofore under the Minister of National Economy, were also brought within a unified scheme of national instruction and subjected to the jurisdiction of the Minister of Public Instruction. To emphasize the growing centralization, the name of this ministry was changed in 1929 to the Ministry of National Education.[2]

Fascistization of the Schools. Fascistization has accompanied centralization. School teachers are all members of the Fascist associations for public employees which, as previously pointed out, constitute an appendage of the party. The teachers are carefully examined as to their political records and opinions; and their political behavior must be above reproach. The teacher, moreover, is expected to devote much of his time in the classroom to indoctrinating the precepts of the regime, his activity in this respect being constantly checked by his supervisors.[3] Further evidence of the Fascistization of the Italian educational system is to be discerned in the regime's textbook policy. As early as 1928 national educational authorities decided that the contents of textbooks in the social sciences and of the elementary readers would have to be brought into conformity with the "historical, political, juridical, and economic requirements" imposed since October 28, 1922, the date of the March on Rome.[4] Since none of the existing textbooks was found to meet with these "requirements," a commission was appointed to edit and revise textbooks in such

[1] See G. Gentile, *The Reform of Education,* trans. by D. Bigongiari (London, 1923); see also H. R. Marraro, "The New Education in Italy," *Current History,* XXXVII (Feb., 1933), pp. 571-576.

[2] For some of these changes see B. Giuliano, "Italian National Education and the 'Balilla' Organization," in *What Is Fascism and Why?* T. Sillani, ed. (London, 1931), pp. 152 ff.

[3] See Hélène Tuzet, "Notes on Civic Education in the Schools of Fascist Italy," *Italy Today,* V. M. Crawford, ed., 2nd series, no. 10, Oct., 1931, pp. 3 ff.

[4] Art. 1 of decree law of Mar. 18, 1928, no. 780, *G. U.,* Apr. 23, 1928, no. 95, p. 1760.

a manner as to make them suitable. The commission was enjoined to provide elementary readers which would serve as "instruments for the spiritual development of the new Italian and for the education of adolescents in the new atmosphere created by Fascism." The commission has since discharged this task and provided the Italian schoolboy with a textbook to which not even the most critical apologist of the regime can object.[1]

The Schools and the GIL. The Fascist youth organization, the *Gioventù Italiana del Littorio* (GIL) is closely identified with the school system.[2] Its various units for boys and girls from 6 to 18 are virtually adjuncts of the classroom. Many of their members are recruited through the schools; leaders are often school teachers; and their exercises are usually held on school premises and supplement the regular instruction. The specific curricular function first assigned to the youth organization was physical education. That activity had been taken out of the regular curriculum of the schools by the Gentile reform and transferred to a special organization known as the *Ente Nazionale per le Educazione Fisica.* When this *Ente* was dissolved in 1926, the activity was placed under the jurisdiction of the youth organization. The athletic competitions and other events of a similar nature sponsored by both boys' and girls' units are numerous and varied; and praise for this feature of Fascist activity has been almost universal. Fascism, however, considers physical education but a single feature of the broad purpose of the youth groups which it sponsors. That purpose is to mold the younger generation into loyal disciples of the Fascist cause. Hence, besides the athletic program, the youth leaders stress formal lessons in patriotic duty, exercises designed to inculcate the virtues of obedience and respect for constituted authority, and instruction of a pre-military character.[3]

[1] The following is the more important textbook legislation: decree law of Feb. 5, 1928, no. 577, *R. U.*, 1928, III, p. 2588; decree of Oct. 11, 1928, no. 2405, *R. U.*, 1928, VII, p. 7402; law of Jan. 7, 1929, no. 5, *R. U.*, 1929, I, p. 252; decree law of July 28, 1929, no. 1363, *R. U.*, 1929, V, p. 5486; and decree of Aug. 22, 1930, *G. U.*, Sept. 1, 1930, no. 204, p. 3439.

A complete revision of the Italian school system is now in progress and the results bid fair to identify curriculum and instruction even more intimately with the Fascist polity. A feature of the revision is the "School Charter" promulgated by the Fascist Grand Council on Feb. 15, 1939. The charter contains 29 declarations of Fascist pedagogical "principles," one of which, in imitation of Nazi policy, requires rural labor service from students during vacation periods.

[2] For further discussion of this organization, see p. 663.

[3] See Giuliano, *op. cit.*, pp. 155 ff.; also D. S. Piccoli, *The Youth Movement in Italy* (Rome, 1936). For further particulars on pre-military instruction for youth see p. 744.

The Universities. Higher education is centered in 21 universities, of which some of the better known are those at Bologna, Florence, Turin, Milan, Padua, Rome, and Naples. Approximately half of these institutions are wholly supported by state funds; the remainder are partially supported by such funds. The Fascist authorities seem to have been rather loath to tamper with the universities for some years after 1922; and except for depriving the professors of permanent tenure by the Civil Service Act of 1925, and occasionally dismissing a professor who had clearly manifested his hostility to the regime, they were left untouched. Active interference, however, began in 1929, when the then National Secretary of the party, Signor Turati, called for the organization, under the party's sponsorship and control, of all the university personnel below the rank of professor.[1] A year later the Fascist Grand Council resolved that, in the future, administrative officers of higher institutions of learning, including rectors and deans, should be chosen from among those candidates who wore the party badge.

The Professors' Oath. The principal violation of academic freedom came in August, 1931, when university professors, in common with other teachers, were required to take an iron-clad oath of loyalty to the regime. In it they had to swear to uphold the existing Government, abjure any party or association inimical to Fascism, and agree to bend every effort to make patriotic Fascists of their charges.[2] Eleven professors from seven different institutions, chiefly from the University of Rome, refused to take this oath and were dismissed. Several others, including former Premier Orlando and the philosopher, Benedetto Croce, resigned their positions, apparently choosing this course in order to avoid taking the oath.[3] The list of dismissals and resignations has been supplemented in recent years, especially following the enactment of the anti-Semitic decrees of 1938; and there is no doubt that today the Italian universities are as much under the thumb of the Government as any other educational institution.

The Church

The Liberal Modus Vivendi. The one institution in the moral domain which lay outside the reach of the Fascists and which they appeared to have little opportunity of allying with

1 Haider, *op. cit.*, p. 157.
2 Decree law of Aug. 28, 1931, no. 1227, *G. U.*, Oct. 8, 1931, no. 233, p. 4914.
3 See *School and Society*, Jan. 9, 1932, pp. 47-48.

their system was the Roman Catholic Church. As related elsewhere,[1] the parliamentary State had followed a "liberal" policy towards that institution, Cavour's policy of a "free church in a free State"; and in 1871 had incorporated that policy in the Papal Law of Guarantees. Its main provisions rejected by every Pope after 1871, that law had none the less come to provide a working arrangement between papal and public authorities; and successive concessions from both sides had gradually introduced a considerable degree of co-operation.[2] Nevertheless the international position of the papacy within Rome had remained a purely *de facto* one; and the privileges and duties of the Roman Church as the chief confession of the kingdom badly needed clarification and definite legal authorization. Successive Cabinets after the World War, especially those of Nitti and Bonomi, had sought to resolve the existing issues and place relations upon a more legalized plane; but all efforts had been fruitless.

The Lateran Agreement. Undaunted by these failures, the Fascist Government, as early as 1924, itself began making overtures looking towards a definitive settlement. Although the suppression of the Catholic Populist Party and the monopolistic Fascist legislation directed at schools and youth organizations could hardly be interpreted as beneficial by the Church, many of the acts of the regime did find favor. This was notably true of the suppression of such papal enemies as the Communist party and the Free Masons. Fascism had also made many gestures of a friendly nature, such as the re-establishment of religious education in the public primary schools, the restoration of religious insignia in public and educational establishments, and the appointment of military chaplains to all the units of its youth organization. Fascist emissaries indicated that they were willing to make a generous financial settlement to compensate the Church for her loss of territorial sovereignty after 1870. The Church, moreover, was herself inclined by this time to seek a settlement of the "Roman Question." Her leaders had apparently become aware that the continuance of the liberal *modus vivendi* would become increasingly difficult with a Government which abjured liberalism and which sought a political and moral monopoly. Pope Pius and his representatives consequently accepted the Fascist overtures in a spirit of far greater cordiality than the outside world expected they would; and a definitive settlement

[1] See p. 586.
[2] Cf. Carlo Sforza, *The Makers of Modern Europe* (Indianapolis, 1930), p. 332.

was finally agreed upon. On February 11, 1929, at the historic Lateran Palace in Rome, an agreement was initialled by Cardinal Gasparri acting for Pope Pius, and by Mussolini acting for the Italian Government; and the more than half-century-old conflict between Church and State, precipitated by the events of the *risorgimento* and national unification, was formally brought to an end. It was Signor Mussolini's and Fascism's greatest triumph up to that hour.

Treaty and Financial Settlement. The Lateran agreement actually embraced three pacts. The first of these was a treaty in which Italy recognizes the sovereignty of the papacy over the small area within Rome now known as Vatican City. Within that area the Pope functions as a temporal sovereign, the equal of any other head of State. The treaty confirmed exclusive papal jurisdiction over various ecclesiastical properties within Rome and in the immediate vicinity, including the papal summer residence at *Castel Gandolfo.* Most of the provisions of the former Law of Guarantees respecting the inviolability of the head of the Church and his freedom of communication with the outside world were confirmed. The second pact was really an integral feature of the first since it merely embraced a financial indemnification for the extinction of papal sovereignty outside of Vatican City and for the physical losses suffered by the Church since the annexation of the Papal States by the Kingdom of Italy. The sum guaranteed by the Italian Government to the Vatican treasury was about one and three-quarters of a billion lire, in cash and Italian consols.

Concordat. The third pact, the concordat, regulates the Church's ecclesiastical functions within Italy and in the Italian colonies. Modelled upon the lines of the post-War concordats, such as those concluded with Poland and with Lithuania, the Italian concordat proclaims Catholicism as the official religion of the State. It regulates the civil position of clerics, the appointment of bishops and other ecclesiastical officials, and the juridical status of religious corporations. It also provides for payment out of public funds for the maintenance of religious activities and exempts Church property from taxation. Of great importance is the Italian Government's undertaking in the concordat to recognize the civil implications of the marriage sacrament and the rules of canon law affecting marriage. The concordat pledges the Government to permit religious instruction by priests in the schools of the kingdom and to allow the Church

to maintain secular organizations such as the Catholic Action under religious auspices.[1]

Meaning of the Lateran Agreement for Fascism. In signing the Lateran pacts, Mussolini raised the Church in Italian law to the status of an international body, thereby abjuring the position of the liberal jurists, implicit in the Law of Guarantees, that the Church in Italy was subject to unilateral legislation by the Italian Government. In taking this step, he weakened, in a sense, Fascism's juridical claim to legislate for the Church and thereby reduced the regime's pretension to totalitarian control over the moral life of Italians. Practical political advantages have, however, more than compensated for the sacrifice of what was, after all, only a theoretical claim. For the first time since 1860, the Italian Government has at least formal assurance that the Church is its ally and that every priest in the land will give his moral support to constituted public authority. In addition the agreement gave Fascism new prestige in all countries where Catholicism is strongly entrenched and valuable support for its policy of economic and political penetration outside of Europe.[2]

Church Confined to Religious Activities. Fascism's leaders have, moreover, made it perfectly clear that in their opinion the concordat has conceded the Church no other prerogatives within Italy than freedom to perform her religious functions and to provide religious instruction in the schools. An opportunity to emphasize this view came shortly after the concordat was signed by the treatment which the Government meted out to the Catholic Action. When Catholic Action youth groups began to display a tendency to duplicate the activities of the Fascist youth organization, a decree in May, 1931, ordered all Catholic Youth offices closed.[3] This action was subsequently modified when Catholic Action authorities promised to form no professional associations and to confine their youth groups to strictly religious activities. Differences have flared up on several occasions since; and even the head of the Church has made it plain that the Fascist

[1] For the text of the concordat see *Current History,* XXX (July, 1929), pp. 558-566; laws for the application of various portions of the concordat are to be found in *B. P.,* VII (July, 1929), pp. 131 and 175.

[2] Cf. E. W. P. Newman, "The New Crusade," *Fortnightly Review,* CXXXII (Oct., 1929), pp. 451 ff. On the relations of Fascism with the Vatican see especially B. Williamson, *The Treaty of the Lateran* (London, 1929); F. A. Ridley, *The Papacy and Fascism* (London, 1937); S. W. Halperin, *The Separation of Church and State in Italian Thought from Cavour to Mussolini* (Chicago, 1937); G. Seldes, *The Vatican, Yesterday, Today, Tomorrow* (New York, 1934).

[3] Decree of May 28, 1931, no. 696, *G. U.,* June 20, 1931, no. 141, p. 2947.

monopoly over education deprives the Church of one of her oldest and most essential prerogatives. The Government, however, has remained adamant and has offered no substantial concessions; though its leaders are willing to admit that Italy is Catholic, they insist that she is, above all, Fascist.

The Apparatus of Repression

Fascism's Reliance on Police. As indicated at the beginning of this chapter, the effort to control the spontaneous moral life of a great nation and to force it into politically approved channels has necessitated that Fascism should take on many of the more unlovely characteristics of a despotic police State. The first of these characteristics is to be discovered in the vast and intricate police organization. From the former regime Fascism inherited both the local police forces and a national force called the *Carabinieri.* The first of these, numbering about 150,000, is attached to the various prefectoral offices within the 98 provinces. Although supported partly out of local funds and directly commanded by local officials, this force is nevertheless subject to the orders and disciplinary regulations of the Ministry of Interior. The *Carabinieri,* numbering about 60,000, are still more directly under that Ministry's jurisdiction. Detachments of this force also exist in each of the various provinces under regional commanders appointed by the central Government.[1]

Special Fascist Police. Fascism's principal addition to these forces is the Voluntary Militia for National Security. As indicated elsewhere, only a few detachments of the Militia are constantly on duty.[2] The entire body, however, is subject to call for emergency police service and all members are regularly equipped with arms. Selected members of the Militia and others are enrolled in a second Fascist force. This is the secret political police known as the *Opera Volontaria Repressione Anti-Fascista* or OVRA. Under the personal command of the *Duce* or his lieutenants this force is engaged in ferreting out anti-Fascist activity of all sorts, checking the movements and communications of suspicious characters, and generally acting as a sort of public espionage instrument against Italian citizens and foreigners resident in Italy.[3] The sum total of the personnel of all these police

[1] On the organization and personnel of the *Carabinieri,* see League of Nations *Armaments Yearbook* (Geneva, 1936), p. 497.

[2] See p. 665.

[3] This is apparently a purely voluntary organization unauthorized by law. It may, however, find a legal basis for existence under the decree of Nov. 6, 1926,

forces, regular and Fascist, supplemented by the members of the local *Fasci* who do not belong to the Militia and who can be called upon to do police duty in an emergency, gives contemporary Italy a truly impressive instrument for the maintenance of public order and internal political security. In proportion to the nation's population, it is probably a larger force than is available in any other State.

Discretionary Police Powers Over Personal Liberty. Fully as important as the size of the police forces in determining their relation to the regime is the character of the discretionary powers which they may exert over individual liberty and property. This chapter has already given some indication of the extent of this discretion in connection with the regime's regulatory and censorial control over the civic activities of individuals. It is, as we have seen, a discretion which is limited by the flimsiest kind of judicial responsibility. Even such responsibility disappears when police authorities act against persons with a criminal record or persons who are politically suspect. All such individuals may be classified under the Security Act as "infamous"; "public rumor" that they are habitual criminals or that they are "dangerous to the national order of the State" justifies their inclusion by the police in such a category. Once labelled in this manner, they may be "admonished." The "order of admonition" is drawn up by a commission consisting of the prefect, the provincial chief of police, the local chief of the *Carabinieri*, and the commandant of the Fascist Militia of the province. An "admonished" person cannot remove from his commune, even temporarily; he must abide by a police curfew and generally conduct himself in public places as the police may require.[1]

Police Deportation. The same commission which draws up "admonitions" also has authority to deport an "admonished" person or any other person who "has committed, or manifested the intention of committing, acts which may disturb the national, social, or economic order of the State or obstruct public authority in such a manner as to jeopardize the national or international interests of the State." Deportation by the police is known as *confino di polizia.* The condemned person may be sent from his

no. 2211, *R. U.*, 1926, VIII, p. 8360, which instituted a special police service for political investigation to protect the national order of the State. The decree was converted into law Jan. 22, 1928.

[1] The regulations governing "admonitions" are contained in arts. 166, 168, and 173 of the Public Security Act of Nov. 6, 1926, no. 1848, *R. U.*, 1926, VIII, pp. 7945 ff.

own to any other commune in the kingdom or the islands; usually he is sent to the penal islands which include Lampedusa, Ponza, or the Lipari Islands off Naples. Technically his exile cannot exceed five years. Appeal from the sentence of deportation may in certain instances be taken to a ministerial commission at Rome; there is no judicial appeal. For all practical purposes the discretionary powers of the police are complete; they are the deportee's law-maker, judge, and jailer.[1]

The Fascist Concentration Camp. During the earlier years of Fascism several thousand persons, many of them political offenders, were deported under these regulations; in later years, the number has tended to decrease. The system of police deportation is simply the Italian Fascist version of the now familiar concentration camp, used in all contemporary European dictatorships, or of the old imperial Russian system of police deportation to Siberia. Incidentally the Russian system of deportation was probably more humane, since it occasionally permitted the family of the deported person to accompany him into exile. The victim was also given some opportunity to engage in economically useful enterprise. Normally banished persons in Fascist Italy are not given this consideration. They are constantly subjected to police surveillance; they may be prevented from attending public places or public spectacles; and in all things must conform to whatever regulations the local authorities may draw up to guard them and prevent their escape.[2]

Special Tribunal for the Defense of the State. Fascism's apparatus of repression has also required a weakening of judicial protection for persons accused of political crime and the introduction of star-chamber courts. Some of these developments have been described elsewhere in this book.[3] There remains to be described the Special Tribunal for the Defense of the State, created in 1926, shortly after one of the numerous early attempts against the life of Premier Mussolini.[4] The law creating the

[1] The regulations governing deportation are in arts. 184, 185, and 190 of the act just cited.

[2] For local regulations at place of confinement see Public Security Act, previously cited, art. 190. An account of these regulations, as well as a narrative of an escape from detention on the Lipari Islands, is to be found in F. F. Nitti, *Escape* (New York, 1930); see also H. H. Tiltman, *The Terror in Europe* (New York, 1932), pp. 198 ff.; B. King, *Fascism in Italy* (London, 1931), p. 65; and Pietro Nenni, *Ten Years of Tyranny in Italy,* trans. by A. Steele (London, 1932).

[3] See pp. 647 and 711.

[4] See law for the Defense of the State, Nov. 25, 1926, no. 2008, *R. U.*, 1926, IX, p. 8880; also decree of Oct. 3, 1929, no. 1759, *R. U.*, 1929, VI, p. 6235, and decree of Oct. 3, 1929, no. 1770, *R. U.*, 1929, VI, p. 6247.

Tribunal gave it jurisdiction over (1) all attempts against the life of the King, the members of the royal family, and the Head of the Government; (2) over conspiracy against the regime and attempts to revive the abolished political parties or free associations; and (3) over attempts to distribute misleading information about the Government. In 1931 much of the legislation giving the Special Tribunal its jurisdiction was repealed and its substance incorporated into appropriate articles of the revised Penal Codes.[1] The president of the Tribunal must be a general in the army or a ranking officer in the naval or air forces. Associate judges, five in number, and an appropriate number of alternates, are appointed from those officers of the Fascist Militia who have at least the rank of Consul. If the Militia officers also hold a high position in the regular armed forces of the nation, they, like the president, need hold no law degree. All appointments are made by the Head of the Government acting through the Ministry of War. Although the law calls for public trials, the judges, in agreement with the prosecutor, may order the exclusion of the public and conduct proceedings *in camera*. The examination of the accused both before the examining magistrates and before the Tribunal itself is distinctly prejudicial, in that it gives but brief time for defense counsel to prepare briefs (eight days) and places unusual weight upon official testimony. The procedure which is always invoked is that of the court-martial. No appeal is allowed; and the decisions of the court must be carried out within 24 hours.

Activity of the Special Tribunal. Various estimates exist as to the number of condemnations which the Tribunal has pronounced since it began its sittings in 1927. Rather reliable statistics indicate that it has sentenced at least a half-dozen persons to death and more than 3000 others to various terms of imprisonment. The specific offenses which have been placed in the Tribunal's docket have ranged all the way from mere provocative incidents, such as waving the Red flag, or singing the *International*, or insulting officers of the Government, to the more serious offenses of refusing to pay taxes or conspiring against the Government or the lives of public officials.[2] Although it was originally contemplated to keep the Tribunal in existence for only five

[1] Law of June 4, 1931, no. 674, *R. U.*, 1931, III, p. 2820.

[2] For some early statistics on this Tribunal see *Annuario statistico italiano* (1931), 132.

years, its life was first extended for a similar period in 1931,[1] and then in 1936 its existence was apparently made permanent.

The Fascist Conception of a State of Siege. Since public controls over liberty in contemporary Italy are so comprehensive in scope and permit such wide discretion to officials, it might be supposed that there would be no need for the extraordinary powers such as freer governments are sometimes compelled to assume in periods of emergency or such as liberal Italy occasionally asserted by declaring a state of siege.[2] Fascism, however, has its own conception of emergency powers. The Public Security Act of 1926 permits the Minister of the Interior, with the consent of the Head of the Government, to declare either a state of public danger or a state of war for the whole kingdom or for specific portions thereof whenever either declaration appears to them to be necessary. Whenever a state of public danger is proclaimed, the Minister of the Interior or the prefects may issue whatever ordinances appear to be necessary to insure public security and order. Upon the content of such ordinances there is no limitation other than the official's discretion; standing law, in so far as it may conflict, is *ipso facto* superseded. As a public safety measure, these officials may at the same time order the arrest of any persons deemed dangerous, placing them in police custody and denying them every form of judicial protection. The more ominous proclamation of a state of war has the effect of turning over the civil administration to the military authorities. The prefect is himself superseded by the local military commander; and the entire country or specified portions thereof are placed under martial law.[3]

Conclusion

Universal Requirements of Dictatorships. Since Aristotle it has been axiomatic in politics that a dictatorship dare not tolerate criticism and that it must constantly guard against opposition and conspiracy. Hence stringent censorship regulations, restrictions on elementary personal rights, and police methods of a sum-

[1] Law of June 4, 1931, no. 674, cited, and decree of Mar. 29, 1932, no. 461, *R. U.*, 1932, II, p. 1139.

[2] The Crispi cabinet, for instance, proclaimed a state of siege in Sicily in 1894 during the peasant uprisings in that quarter. A similar declaration occurred in 1898 following the industrial disturbances in Milan and other Italian cities; the provinces of Milan, Florence, and Naples were among those affected at that time. Army regulations took the place of law just as they did in the frontier zones during the World War.

[3] For regulations governing the state of public danger and state of war, see arts. 219-224 of the Public Security Act of Nov. 6, 1926, previously cited.

mary and inquisitorial character are omnipresent phenomena in such regimes. Fascism has been no exception to this axiom of dictatorial survival. The inquisitorial straitjacket to which it subjects every aspect of spontaneous human initiative and its reliance upon summary police and administrative measures in dealing with nonconformists constitute a system of public coercion of which any Metternich or Napoleon of history might have been proud.

The Fascist Regime not a Mere Police State. But it would be a grave error to conclude from this that the Fascist State is just another police State, content to use the defensive measures of traditional dictatorships to preserve its political hegemony. As indicated at the beginning of this chapter, Fascism's policy towards the moral and cultural spheres of Italian life has not been merely conquest but also assimilation. Into the vacuum created by its censorship, its police prohibitions, and its antilibertarian statutes and decrees, Fascism has poured its own administrative paraphernalia, slogans, myths, and objectives. It has seized the press and transformed it into an instrument for its own propaganda; it has transformed the school system to suit its own purposes; it has more or less successfully allied itself with the Church; and it has adapted or instituted a great variety of organizations to evoke the interest and conscript the loyalty of the masses. All this is important for it means that Fascism is not merely Italy's governor but Italy's pedagogue, the patron of art and religion, the chief dispenser of bounty and philanthropy, and the guide of life itself. If Fascism is ever overthrown, the event will mark not merely a political change but a change with far-reaching moral and social implications as well.

CHAPTER VII. POLICIES AND PROBLEMS OF FASCISM

Almost a full generation has elapsed since Fascism came to the helm in Italy. Preceding chapters have revealed how, during that period, Fascism has ensconced itself in power, transformed the constitutional life of the State to suit its needs and desires, and assumed control over various aspects of activity. In the course of these chapters some attention has already been given to the policies which the regime has pursued on such questions as public economic regulation, education, and the Church. It remains for us to consider some of Fascism's more unique internal policies, its conduct of Italy's foreign affairs, its colonial activity, and some of the national gains and liabilities which have accrued as a result of Fascism's stewardship.

Land Reclamation and Public Works

Bonifica Integrale. One of the earliest internal policies to which Fascism devoted special attention was that of "integral land reclamation" (*bonifica integrale*). This received its initial impetus from the so-called Mussolini law, passed on December 24, 1928. Legal authorization was still further elaborated by a comprehensive royal decree of February 13, 1933. The policy calls for delimitation of certain large areas in the peninsula and the islands to which systematic reclamation is to be applied. This involves marsh drainage, soil conservation, road building, the construction of dams for irrigation and water supply, and the actual colonization of the areas reclaimed. Much of the work is undertaken and financed by the Government itself, its outlays being supplemented by special assessments upon property owners. Detailed improvements are left to the property owners who, however, are aided by governmental subsidies which occasionally equal at least a third of the cost of the improvements which they effect. Property owners affected by the reclamation policy are virtually compelled to join local improvement consortiums through which the Government grants its subsidies and co-ordinates private with publicly financed improvements.

The Results of the Policy. The reclamation policy has produced results which are a credit to Fascism. Improvements have been made, or are in the process of being made, on some twelve million acres of swampy or arid lands which have hitherto had no economic value. The greatest single project up to the present has been the draining of the Pontine marshes near Rome, upon which work was seriously begun in 1931. Since that time about half a million acres of marshland have been drained and improved, and some 60,000 persons have been settled as colonizers. A new province, Littoria, has been organized and several entirely new rural centers, including Littoria, Sabaudia, Pontinia, and Aprilia, have been constructed. The program of reclamation already executed or projected will cost the Government in the neighborhood of ten billion lire. Actual financing is provided chiefly by loans made from the funds accumulated by premium deposits in the National Insurance Institute and the National Fascist Institute for Social Insurance. The Government plans to retire its obligations to these institutions over a period of some 30 years.[1]

Public Works. The reclamation policy has been supplemented by a program for the construction of all sorts of public works. This program was notably augmented with the onset of the economic depression in 1930 in order to provide work for mounting numbers of unemployed; and many billions of lire have been added to the public debt as a result. The program has included the improvement of docks and harbors in some of Italy's many seaports; the electrification and extension of the publicly owned railroads and the improvement of the nation's telegraphic and telephonic systems; the modernization and ornamentation of some of the principal cities, of which the work done in Rome furnishes an outstanding example; the building of new schoolrooms; and the restoration of Northern areas devastated in the World War and of Southern areas, particularly in Calabria and Sicily, damaged by the earthquakes of 1908 and 1915. Governmental subsidies have also stimulated the building of dwelling

[1] For the land reclamation policy, see G. C. Baravelli, *Integral Land Reclamation in Italy* (Rome, 1935), and G. Tassinari, *Fascist Economy*, trans. by E. Cope (Rome, 1937), pp. 114 ff.; see also *Outline Studies*, series II, no. 6 (Italian Library of Information, New York, June, 1939), pp. 14 ff. For some statistics on works undertaken and completed and the expenditure they have necessitated up to end of 1936, see *Annuario statistico italiano* (1937), pp. 63-64. In July, 1939, the Government announced plans for reclaiming large areas in Sicily, breaking up the *latifundia* in that island and encouraging peasant proprietorship; see *Outline Studies*, series III, no. 2 (Italian Library of Information, New York, Dec., 1939), p. 17.

houses and tenements in some of the principal centers of population. Road building has been a particularly important feature of the public works program. Older roads have been improved and several new arterial highways and motor roads have been constructed. New bridges and tunnels have linked up more directly the great cities of the North. Of interest in this connection is the two-and-one-half-mile bridge which now connects Venice with the mainland. Construction and maintenance of the national system of roads is in the hands of an autonomous governmental corporation known as the *Azienda Autonoma Statale della Strada.*[1]

Autarchy

The "Battle of Wheat." Intimately connected with Fascism's reclamation policy is its now famous wheat campaign, or "battle of wheat," inaugurated in 1925. The object of this campaign is to reduce Italy's traditionally adverse balance of trade to which the importation of one-third of her cereal requirements made a sizable contribution. The methods adopted in the campaign involved an increase of wheat acreage and the use of more intensive and more scientific agricultural methods, particularly in the South where the yield per acre has always been low. The principal method, however, was an increase in the price offered to growers. This has been secured by governmental subsidies and increased tariff duties. Italy's wheat price is now (1939) several times as high as the world price ($1.92 per bushel). The way in which the Government controls the marketing of the national wheat crop and other agricultural products has already been touched upon.[2] If the cost to the consumer be eliminated from consideration, the wheat campaign may be considered successful. Production per acre in normal years has risen appreciably; and although Italy has not yet reached self-sufficiency in this important staple, the average importation since 1934 has been less than half of what it was a decade earlier.

The Campaign for National Self-Sufficiency. The effort to secure self-sufficiency in the case of wheat proved to be but the forerunner of a broad campaign for national self-sufficiency or autarchy. This campaign may be said to have been formally inaugurated after the League of Nations imposed economic sanctions against Italy during the Ethiopian War of 1935-36.[3] The

[1] For the public works program, see Tassinari, *op. cit.*, pp. 143 ff.
[2] See p. 698.
[3] See p. 735.

autarchic objectives are to make Italy as independent as possible of foreign sources in the case of agricultural staples and industrial raw materials and to stimulate home production generally; it is hoped thereby to introduce greater equilibrium and flexibility in the national economy and insure its integrity in time of foreign war or some such emergency as that produced by the sanctions episode. For a country whose native supply of such elementary industrial raw materials as coal and iron is so limited, autarchy seems to be a rather far-fetched policy, the pursuit of which must inevitably be costly. Nevertheless quite serious efforts have been made since 1937 to further some aspects of the policy. Land reclamation and the wheat campaign are now regarded as integral features of the broader policy and added stimulus is being given them as a consequence. New sources of tin ore have been sought for in Sardinia and the colonies and it is hoped that Italy will soon be producing two-thirds of her needs of this metal from national mines. Exploitation of the extremely limited native copper deposits has been given support by the Government; and the production of Italian manganese ores has about reached the requirements of national consumption. Even native iron ore is being produced in some quantity although the source of supply in the Island of Elba is strictly limited and withal difficult and expensive to exploit. Autarchy also calls at the moment for increased cotton production in Italy and the colonies and for the more extensive use of all kinds of synthetic and substitute products. Chief gains in the latter direction involve the production of lanital or artificial wool from casein, of textiles from cellulose, of synthetic gasoline from lignite, and of artificial rubber. The autarchy program is being supervised and directed by a group of economic experts called the Supreme Autarchy Commission whose members are appointed by the Head of the Government.[1]

Social Policy

Fascism's Attitude on Social Welfare. Fascism has paid considerable attention to the material and physical welfare of the rank and file of the population. To exhibit concern of this sort

[1] On the self-sufficiency program consult *Outline Studies,* series II, no. 1 (Italian Library of Information, New York, Nov., 1938), pp. 57 ff. See also B. Mussolini, *Italy and the Problem of Self-Sufficiency* (a speech delivered before the National Council of Corporations, May 15, 1937, and translated and published by the British-Italian Bureau).

has been for it a matter of pride; in addition it has sought thereby to make large sections of the population dependent upon its bounty and thus tie them the more firmly to its political chariot. Mention has been made elsewhere on these pages of the *Dopolavoro* or Leisure Time Organization which provides all sorts of diversions and more serious fare for the working classes, as well as of the cultural and social welfare work achieved through the medium of party, syndicate, and youth organization.[1] By these means Fascism has shown greater skill in reaching the masses than the parliamentary State ever did.

Social Security. Other efforts of Fascism in the field of social welfare have included the development of various forms of social insurance. In many instances the regime simply elaborated the appropriate legislation on the subject which former liberal governments had enacted. This is notably true of workmen's unemployment and accident insurance systems and of the old-age pension system, the beginnings of which go back at least a generation before Fascism. On the other hand, since 1922 insurance against the personal hazards of employment has been extended to include occupational disease, and the Fascist labor contracts now require financial aid for employees incapacitated by illness. In 1934 provision was also made for a small weekly allowance to those employed heads of large families whose income was reduced because of the introduction in that year of the 40-hour week. Payments came out of contributions made by employers and by workmen, higher rates being assessed against those employees who worked more than 40 hours per week. In 1936 this special weekly allowance was extended on a permanent basis to all industrial workmen with children under 14, irrespective of the length of the working week, the rate of the weekly subsidy being fixed at four lire per child. Worthy of note in the field of social security are the steps which have been taken to insure all workmen against tuberculosis and to provide treatment at public expense for those who become afflicted with that disease. Also noteworthy is the organization for the protection of maternity and infancy, known as the ONMI, which, financed in part by the tax on bachelors, assists mothers of low-income families before and after childbirth and safeguards the health and welfare of underprivileged children.

Social Insurance Institutes. The accident insurance plan is

[1] See pp. 666 and 667.

financed and administered by the National Institute for Accident Insurance. All other forms of social insurance, including that against tuberculosis and the activities of the ONMI, are directed and financed by the National Fascist Institute for Social Insurance. As an incidental part of their principal activity, these Institutes carry on a great deal of disease prevention work and provide for the hospitalization and rehabilitation of incapacitated persons. Their financial accumulations, which are huge, also serve as fiscal reservoirs from which the Government may derive loans to finance various projects. Mention has already been made of the loans secured from these Institutes for reclamation purposes.[1] Although Fascism reorganized the social insurance Institutes and amended their titles, both of them had their beginning under the old regime.

Unemployment. As in other states, the unemployment insurance system did not suffice to meet the problem of unemployment created by the economic depression. Several elements of the working-class population, including farm laborers and domestic servants, were not provided for in the system; and in the case of many individuals, accrued benefits were soon exhausted. The total unemployed mounted rapidly after 1930, until in 1933 it had reached the official figure of 1,100,000. Fascism's answer to the problem thus created was not particularly effective. It tried to escape a systematic dole by intensifying the public works and reclamation programs, by improving its labor exchanges, and by virtually preventing the internal migration of workmen. Its most effective policy, one which incidentally contributed towards lowering the average income of the employed Italian workman, was the legal reduction in 1934 of the normal working week from 48 to 40 hours. The number of unemployed dropped sharply in 1935; subsequently much of the excess man power appears to have been drained off by Italy's military and colonial adventures.[2]

Fascist Demographic Policy. Much of Fascism's concern for its social services is explained by its demographic policy which aims at the unlimited expansion of the Italian population. It is chiefly in the interests of this policy that the special subsidies are given to the heads of large families and that the anti-tuberculosis campaign and the work of the ONMI have been inaugurated. Other features of the policy are the special tax on bachelors,

[1] See p. 726.

[2] For a consideration of various aspects of Fascism's social welfare policy, see F. Gazzetti, *Social Welfare in Italy* (Rome, 1937), and P. Corsi, *Protection of Maternity and Child Welfare in Italy* (Rome, 1937).

already mentioned, and public loans to heads of families, the state cancelling the obligation to repay portions of the principal as additional children are born. Fascist leaders also harp constantly upon the necessity of checking the declining birth rate. Still another feature of the policy are the obstacles which Fascism places in the way of emigration. In the days immediately before the World War almost a million Italians left the homeland annually; Fascism's restrictions, aided, to be sure, by the less hospitable attitude of foreign lands which formerly welcomed immigrants, have cut down the annual net outflow to considerably less than 100,000. The military implications of Fascism's demographic policy are obvious; not so clear, however, is the solution of the problem of supporting the resulting increase in the population. Fascism's solution is an augmented volume of economic activity and emigration to the colonies. Whether this solution can be achieved rapidly enough to avert decline in *per capita* income and wealth remains to be seen.

Foreign Policy—1922-1935

Fascism's Attitude Towards Foreign Affairs. Fascism's preoccupation with internal affairs has not prevented it from giving primary consideration to Italy's international position. As indicated earlier, the regime's origins were intimately bound up with the post-War protest against Italian defeatism and the policy of "surrender" allegedly pursued by pre-Mussolinian cabinets. Nothing was more certain than that when Signor Mussolini came to power, every effort would be made to revive patriotism and waning nationalism by a vigorous foreign policy. Announcement of such a course was made before the Senate as early as November, 1922, in the Fascist leader's first speech on foreign affairs after assuming office. It was his intention, he said, to build up the nation's own strength and diplomatic prestige in order that she might be feared and respected abroad. Nor were there to be any more surrenders "or rendering of favors without adequate compensation"; Fascism's foreign policy, although aiming at stability and peace in Europe, was to be intensely realistic and its supreme motif was to be *"sacro egoismo."*

The Adriatic. This new policy secured its initial demonstration in the Adriatic region. Members of an Italian military commission, engaged with representatives of other European powers in delimiting the Greco-Albanian frontier, were waylaid and murdered by Greek bandits in the summer of 1923. Mussolini's reply

was a naval bombardment of Corfu and the temporary occupation of that Greek island. Withdrawal occurred after the Council of Ambassadors of the Entente powers, to whom the issue had been referred, had awarded an indemnity to Italy, and Greece had paid the indemnity thus awarded. Fascist Italy also revised the post-War settlement which liberal Italy had concluded with Jugoslavia, obtaining Jugoslavia's consent to the incorporation of Fiume into the Italian kingdom in a treaty concluded at Rome on January 27, 1924. At the same time Jugoslavia's commercial use of the port of Fiume and the general commercial relations between the two countries were regulated in the so-called Nettuno Conventions. Italy signed these at once; but Jugoslavia, embittered by the concessions her statesmen had made to Italy, held off until 1928. She then ratified the Conventions only at the expense of internal disunity, which sounded the death knell of her democratic constitution. This Adriatic diplomatic activity culminated in 1926 in the conclusion of the Treaty of Tirana with Albania. Capitalizing upon the attitude of the Entente powers, who had agreed somewhat hesitantly that Italy had "special interests" in Albania, Italy in the Tirana Treaty imposed a virtual military and economic protectorate over that State and aided its former president, Ahmed Zogu, to shed his republicanism for the title of King Zog I. The diplomatic conquest of Albania rounded out Italy's control over the Eastern Adriatic littoral and the Adriatic Sea became, in terms of naval strategy at least, an "Italian lake."

The Danube Basin. Among the states of the Danube Basin, Fascist Italy's policy after 1922 was somewhat equivocal. It was unquestionably to her interest to maintain the post-War political status in that area. Hence she shared the Little Entente's desire to ward off a Hapsburg restoration. The members of the Little Entente, Czechoslovakia, Jugoslavia, and Rumania, were, however, political satellites of France, bound to her directly or indirectly by the post-War alliances. Jugoslavia, one of the Entente members, was, moreover, distinctly hostile towards Italy, owing to the latter's Adriatic policy. Consequently, despite the community of interest, Fascist Italy's relations with the Little Entente states were never any too cordial. Indeed on numerous occasions, Italy directly opposed the interests of the Little Entente by openly supporting the Irredentist claims of Hungary and Bulgaria. With the latter of these countries relations were always cordial and they became increasingly so following the marriage of the Bul-

garian ruler, Tsar Boris III, to one of Victor Emmanuel's daughters. Intimate commercial connections also developed between Italy and Hungary, and Italian political influence in this State grew accordingly. After Austria ceased to complain about the treatment accorded the Tyrolese minority under Italian sovereignty and the menace of a Nazi *Anschluss* became grave, that State, too, became closely identified commercially and politically with Fascist Italy.

European Policy. Fascism's attitude towards Europe at large might be described as that of a diplomatic middleman or broker interested in restoring the Continental equilibrium between the powers which the peace treaties of 1919 had destroyed and in extracting whatever national advantage it could out of every transaction. This policy led Italy to support moves to readmit Germany to the concert of Europe and restore her military and diplomatic equality. It was in line with this policy that Italy in 1925 accepted responsibility as one of the guarantors of the Locarno Pact in consequence of which Germany was made a member of the League and secured mitigation of the more extreme penalties visited upon her at Versailles. Italy's European policy also brought her into direct rivalry with France. This rivalry was manifested in diplomatic maneuvers against France's allies of the Little Entente; in a reiterated claim to French colonial concessions allegedly due as the price of Italy's co-operation in the World War; in a demand that France restore the rights of Italian nationals, partly suspended in 1918, in the French protectorate of Tunis; and in constant insistence upon naval and even military parity with France in every so-called disarmament conference. Towards the League Italy's attitude was correct but rarely cordial, Mussolini considering it fundamentally a French and British enterprise and withal an organization whose existence was hardly conducive to the direct and aggressive diplomacy which he wished to pursue.

The Four Power Pact. The advent of Hitler and the resulting military and diplomatic renascence of Germany was regarded by Mussolini as providing a splendid opportunity for institutionalizing the policy of Continental equilibrium which he had been pursuing. Hence the Four Power Pact, broached to the European chancelleries in March, 1933. It was apparently the original object of this instrument to make its four proposed signatories, Great Britain, France, Italy, and Germany, arbiters of the political destinies of Europe. Technically within the

League, of whose Council these four states were permanent members, it actually proposed a four-power substitute for the League in establishing solutions for Europe's current political problems. Although the Pact was finally signed in July, 1933, by the various powers invited to do so, the chorus of objections from smaller nations, particularly from Poland and France's other allies, had effected numerous alterations and had transformed it into little more than a perfunctory gesture of the political supremacy of the great powers. Nevertheless Fascism regarded the Pact as one of its greatest diplomatic achievements up to that time.

Fascism Becomes Anti-Revisionist. Subsequent events made even the gesture of four-power collaboration meaningless. In the summer of 1933, Germany withdrew from the League and the Geneva Disarmament Conference. Shortly after, the Nazi demand for Austrian *Anschluss* became unusually vigorous, culminating in July, 1934, in the notorious Nazi Party *putsch* against the Austrian government and the murder of Chancellor Dollfuss. At the time of the *putsch,* Austria had become virtually a vassal state of Italy and looked to her for the protection of whatever independence she continued to enjoy. Mussolini accordingly despatched troops and planes to the Brenner as his answer to the attempted *Anschluss* and clearly implied that he would intervene should such attempts be repeated. Six months afterward, Italy and France settled most of their outstanding differences; and after Germany, early in 1935, announced that she had re-introduced military conscription in defiance of the Versailles Treaty, it was Mussolini who played host to Italy's World War allies at Stresa and helped formulate declarations opposing any future unilateral attempts by Germany to upset the European *status quo.* Prompted by Hitler's provocations and French cordiality, Mussolini thus appeared, in 1935, to be forsaking his earlier revisionist policy and to be falling into the Franco-British orbit. There possibly he might have remained indefinitely had it not been for the European repercussions of a colonial adventure which he now undertook.[1]

Foreign Policy—1935-1940

Colonial Ambitions: Ethiopia. Fascist colonial ambitions have been partly inspired by Mussolini's desire to emulate Imperial

[1] For earlier phases of Fascist foreign policy see M. I. Currey, *Italian Foreign Policy 1918-1932* (London, 1932); E. W. P. Newman, "Mussolini's Foreign Policy," *Fortnightly Review,* CXXXIV (July, 1930), p. 59; Dino Grandi, "The Foreign Policy of the Duce," *Foreign Affairs,* XIII (July, 1934), pp. 553-564.

Rome which he dreams of reviving. Support for such ambitions have also come from Fascism's Nationalist allies who had begun trumpeting for a policy of imperialism in 1905. Under Fascist prompting, moreover, the popular demand for some form of compensation for the colonial disappointment which Italy suffered at the end of the World War had, with the passing of time, grown more, rather than less, vigorous. In addition to all this there was the apparently logical necessity for territorial augmentation implicit in Fascism's demographic policy which, while emphasizing the growth and conservation of population, also curtailed the right of emigration to foreign countries. All these colonial desires became fused in 1935 in Signor Mussolini's desire to carry out successfully what former Italian statesmen had tried and failed to do, i.e., to wrest the vast Ethiopian domains in northeastern Africa from the rather feeble control of the reigning Negus.[1] Using as an excuse a frontier incident in which a number of Italian soldiers had been killed by Ethiopians, Marshal de Bono invaded Ethiopian territory on October 3rd. Military operations were successfully concluded by Marshal Bodoglio's occupation of Addis Ababa, the Ethiopian capital, on May 5, 1936. A few days later a royal decree formally annexed Ethiopia to Italy and vested the title of the Ethiopian Emperor in the King of Italy.[2]

The League Sanctions. Some time before the Italian attack had been launched against her, Ethiopia, as a member of the League, had appealed for its support in resisting Italy; and on November 18, 1935, in pursuance of Article 16 of the Covenant, the League imposed sanctions against Italy. These involved an arms embargo, the prohibition of a large list of exports to Italy and the prohibition of imports from Italy, and the denial of credit facilities. Approximately 51 countries, members of the League, agreed to put these sanctions into effect. This unprecedented measure in international history undoubtedly hurt Italy severely; nevertheless she resisted it successfully. Her success was due in part to the fact that she had previously geared her economy to meet the shock of sanctions and to popular enthusiasm for the national cause which sanctions helped to foster; in part, too, it was due to the failure to widen the scope of sanctions so as to include an oil-export prohibition and to the fact that trade

[1] See Royal Institute of International Affairs Information Department, *Abyssinia and Italy* (London, 1935).

[2] Decree law of May 14, 1936, no. 831, *G. U.*, May 18, 1936, no. 115, p. 1602.

lanes with non-League members, notably the United States, were kept open. A further factor in explaining Italy's successful resistance is to be discovered in the speed with which she subjugated the Ethiopians. During July, 1936, two months after the Ethiopian conquest had become a *fait accompli,* the League abandoned sanctions.

From Sanctions to the "Axis." Although sanctions did not achieve their object, they did become a factor in the fundamental change which Italy's foreign policy now underwent. Rightly or wrongly, the Italian public had been led to believe that France and Great Britain had been chiefly responsible for the sanctions policy and that these nations had supported such a policy for their own selfish ends, in the case of Britain to protect her imperial interests in the Mediterranean and Africa, and in the case of France to test sanctions as a possible future weapon against Germany. Credence was lent this view by the concentration of the British fleet in the Mediterranean throughout the crisis and by the apparent willingness of both France and Britain, as evidenced by the abortive Hoare-Laval plan, to compromise the whole issue at the expense of Ethiopia's integrity. This popular impression greatly aided the Fascist Government in gradually transferring its affections to Germany and establishing what is now known as the Italo-German "axis." Collaboration between Rome and Berlin became generally noticeable after the Ethiopian war when the two governments signed the anti-Comintern Pact and created an international scandal by their open support of General Franco's successful effort to overthrow the Spanish Republic. Despite various attempts of France and Great Britain to "appease" Italy, including the conclusion in 1937 of a far-reaching Italo-British Pact to settle mutual differences in the Mediterranean, axis collaboration gradually hardened into a definitive policy which in May, 1939, became a military alliance.[1]

Axis Gains and Losses. Just what ultimate advantage Italy hoped to gain from the axis is not too clear. To be sure the policy satisfied her *amour propre,* seriously wounded after the sanctions affair. It also served to give her a degree of immediate security against the growing military might of Nazi Germany which, during 1937 and 1938 at least, seemed to be sweeping

[1] Mussolini's attitude towards the League after the sanctions episode and his growing cordiality towards Germany are discussed in his speech to the Milan Fascists of Nov. 1, 1936, reprinted in *International Conciliation,* no. 326 (Jan. 1937). The public provisions of the axis alliance are reprinted in Hill and Stoke, *The Background of European Governments,* 2nd ed. (New York, 1940), pp. 546-548.

all before it. German diplomatic or military aid, secured as a result of axis collaboration, must also be credited with having aided Italy to achieve two other external political goals. The first was the establishment of a Fascist Spain, already alluded to. A Spain wedded to Fascist ideologies and grateful for Italian assistance presumably secures Italy an ally of somewhat uncertain strength in the Western Mediterranean. The second goal was the conquest of Albania in March, 1939, by means of which Italian commercial and political penetration of that unhappy land has been greatly facilitated. But German friendship has also had its price. As Germany's ally, Italy had to waive her former objections to German *Anschluss* with Austria and even aid Germany diplomatically in her successful effort to absorb most of Czechoslovakia. As a consequence of this tolerated expansion, a Reich greatly augmented in territory and man power has taken little Austria's place as Italy's neighbor at the Brenner and has become Italy's immediate rival in the Balkans, an area where, after 1919, Italian influence had been paramount. Thus, whatever Italy may have gained from the axis, that policy has also cost her many of the advantages which accrued to her as a result of the great triumph of her arms over Austria-Hungary in the World War.

From the Axis to Neutrality. After the axis had been implemented with a military pact in 1939 European diplomats wondered if Italy had not thereby forfeited her freedom of military and diplomatic action. Speculation on this question became rife during the summer of 1939 as Hitler became ever more insistent upon a "solution" of the Danzig and "Corridor" questions and Europe girded itself for a general war. Most observers were of the opinion that Italy was pledged to join Germany as a belligerent if that nation went to war with Poland and thereby found herself at war with France and Great Britain. Few expected any other alignment. What actually transpired in the now famous Salzburg conversations in August between the Italian Foreign Minister, Count Ciano, and the leaders of the Reich on the subject of Italy's role in an eventual war, will probably not soon be known. From public statements since made by Count Ciano it would appear that the axis military pact did not provide for automatic Italian aid to Germany in case she was attacked by a third power until 1941 or later. Apparently in the Salzburg conversations Italy's representative stood upon the letter of his nation's commitments and refused Germany's request for

military support in any general war which might break out in 1939. It is also possible that Germany actually acquiesced in Italy's decision to remain neutral in such a war or even suggested such a policy. At any rate all the world knows that when a general war did come in September, Italy alone of the great European powers remained aloof and formally declared her neutrality.

Italy's Position as a Neutral. Immediately after that declaration, Italian politicians and journalists had little to say about the axis and doubts began to be expressed in the foreign press that the axis had survived the apparent change in Italo-German relations. Moreover on the last day of October, 1939, cabinet changes were effected which were widely heralded abroad as indicating an anti-Nazi political orientation, many strongly pro-German officials having been replaced by others who had no such reputation. But on December 7th, the Fascist Grand Council solemnly declared that the "relations between Italy and Germany remained those fixed by their pact of alliance"; and in a subsequent speech the Italian Foreign Minister reaffirmed this position. For the time being, therefore, Italy's neutrality policy would appear not to preclude a benevolent attitude towards Germany.

Italy may remain neutral indefinitely. For a nation already weakened by colonial wars and in none too good an economic position, such a policy has obvious advantages. Events may, however, take the power of decision out of Italy's hands; for hostilities may easily spread to the Balkans or to the Mediterranean, areas where the nation has vital interests which she would feel called upon to defend at any cost. Moreover permanent neutrality in the present war is entirely contrary to Fascism's tenets. Hitherto Fascism has stood for a policy of Italian expansion and national power to be secured not by peaceful economic development but by diplomatic *coups* and military decisions. Signor Mussolini has moreover frequently insisted in the past that the years 1939 and 1940 would mark another turning point for Europe—another "hour of decision"—and he has tirelessly exhorted his followers to be prepared to act when the time came. If, now that the hour has struck, Fascism were to be content to sit passively on the side-lines, its behavior would indeed be out of character. There is accordingly a possibility that Fascist Italy will eventually discard neutrality for some more active role, one more in keeping with her traditions and her deepest ambitions.[1]

[1] On June 10, 1940, Italy declared war on Great Britain and France.

Colonial and Imperial Development

Extent of Colonial Empire. The conquest of Ethiopia has brought the Italian colonial empire to sizable proportions. By combining that conquest in 1936 with the earlier East African possessions of Eritrea and Somalia and with Jubaland, which Great Britain ceded in 1924, Italy now has, in the united colony of Italian East Africa, a colonial domain of some 660,000 square miles. A second major colony, approximately equal in area to Italian East Africa, is Libya, formed in 1934 through the union of the former North African Turkish possessions of Cyrenaica and Tripolitania. Libya has been augmented by considerable strips of the Sahara Desert and a few oases which France ceded under the terms of the Rome Treaty of January 7, 1935. In addition Italy possesses the 14 islands known as the Dodecanese, in the Aegean, which were occupied in the Turkish War of 1911. Italian title to these islands, long in dispute, was finally confirmed by Turkey in the Treaty of Lausanne in 1923. Mention may also be made of the relatively unimportant Tientsin Concession in China, which Italy secured after the Boxer uprising. Altogether the Italian colonial area is about 11 times the size of continental Italy, with a population variously estimated as from 9 to 20 million natives and Europeans, the latter but a very small percentage of the total.

Colonial Exploitation. Fascism actively sought to exploit Italy's existing possessions and make them suitable for colonization as soon as it came to power. In order to do this, it was first necessary to reassert authority particularly in Libya where, owing to the withdrawal of Italian troops during the World War, power had largely lapsed into the hands of native chiefs. The campaign with this end in view lasted for almost a decade and involved numerous rather sanguinary encounters between the Italian expeditionary forces and native guerrilla bands. Pacification was largely completed with General (now Marshal) Graziani's successful excursion against the Senussites in 1931. Thereafter active efforts were made to exploit Libya. Public works of various sorts were constructed along the seacoast and efforts were made to redeem what was chiefly sandy waste land through irrigation and the location of sub-soil water. A Libyan colonization society, subsidized quite generously by the Government, undertook to prepare homesteads for prospective colonists on public domain and succeeded in bringing in some emigrants. The largest migration

occurred in October, 1938, when, in a single day, some 20,000 persons, comprising approximately 1800 agricultural families, sailed from Italy for Libya. Although the physical nature of the colony discourages an extensive European population, Fascist authorities hope to raise the Italian population in that colony to some 200,000 by 1941.

Even more intensive efforts are being made to colonize the new East African empire from which Italy expects to receive considerable additions to her agricultural staples and her mineral resources. Surveys of the new territory have been undertaken by numerous public and private organizations and fairly considerable attention is being given to the opening up of communications. New harbor facilities have been constructed at the ports of Massowa and Mogadiscio and some 2000 miles of roads, connecting the coastal regions with the interior and the capital, Addis Ababa, have all but been completed. Addis Ababa is being reconstructed along European lines. Colonization was given considerable impetus by the workmen who accompanied the army of occupation during the conquest and by volunteers in the Militia forces who have taken up permanent residence. Plans at present call for the transplantation of at least a million Italians to East Africa during the next few years.

Government in Libya. General powers of government in Libya are vested in a governor-general who, with few exceptions, has been a military man. To his death (1940) the governor-general was Air Marshal Italo Balbo. When he deems it necessary, the governor-general may seek the advice of an appointed council composed partly of natives. The Libyan area along the Mediterranean littoral and a considerable portion of the hinterland has been organized into four provinces known as Tripoli, Misurata, Benghazi, and Derna, each in charge of a prefect. Since 1937 these four provinces have been designated as the nineteenth compartment of the Italian kingdom proper, a gesture indicating Fascism's desire to identify the colonies ever more intimately with the fortunes of the mother land. Local units of government include residencies and communes, the latter controlled by *podestà* in the manner of the communal governments of the mainland.

East Africa. In the governmental reorganization following the Ethiopian annexation, Italian East Africa was divided into five governments (*governi*) and the autonomous Governorship (*Governatorato*) of Addis Ababa. Each of these six divisions has its own administrative organs headed by a governor. Supervisory

authority over the entire colony is vested in a governor-general at Addis Ababa who also holds the title of Viceroy of Ethiopia. The governor-general, as well as the head of each *governo,* is assisted by an administrative council made up of his own immediate subordinates. In certain cases governor-general and governors are nominally required to seek the advice of their respective councils. The governor-general's council is occasionally enlarged to include local Fascist party dignitaries, Italian civilians, and a few native leaders. As such it technically becomes another council with whom the governor-general may advise when he wishes to do so. Local government is administered along lines similar to those in Libya except that no portions of East African territory have yet been given the status of provinces. Administration is vested exclusively in the hands of a professional Italian colonial service, chief places, such as the governorships, almost invariably going to military men.[1]

Albania. Since her conquest in April, 1939, Albania is technically an independent kingdom united to Italy in a personal union, Victor Emmanuel III having formally accepted the Albanian crown from an Albanian constituent assembly on April 16th.[2] The Italian King is represented at Tirana by a Lieutenant-General for Albania (*Luogotenente Generale per l'Albania*) who exercises all but certain reserved royal powers. The Italian Government has formally assured Albania that she shall enjoy political and cultural autonomy and in pursuance of this promise a new Albanian Constitution was signed by Victor Emmanuel on June 3rd. Nevertheless the governmental system organized under this Constitution appears to be surprisingly like a mere colonial extension of the municipal organs of the Italian Government. There is a national Albanian Fascist Party, modelled on the parent party in Italy. Legislative authority is centered in a Supreme Fascist Corporative Council, members of which are drawn

[1] On the Italian colonies see generally appropriate articles in *What Is Fascism and Why?* T. Sillani, ed. (London, 1931), pp. 125 ff.; *Outline Studies,* series II, no. 1 (Italian Library of Information, New York, 1938), pp. 16 ff.; and H. A. Steiner, *Government in Fascist Italy* (New York, 1938), pp. 126-136. An excellent article on the government of East Africa is to be found in Steiner, "The Government of Italian East Africa," *Amer. Polit. Sci. Rev.,* XXX (Oct. 1936), 884 ff.

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[2] The resolution of the Albanian Constituent Assembly offering the nation's crown to Victor Emmanuel III and the provisions of the new Albanian Constitution may be found in *Bollettino delle Assemblee Legislative* (formerly *Bollettino parlamentare*), series 2, XIII (July, 1939), pp. 74, 75-80.

from the governing bodies of the Albanian Fascist Party and from an organization known as the Albanian Council of Corporative Economy. Executive authority, lodged in the King's representative who, of course, is an Italian and not an Albanian, is as pervasive and self-sufficient as in the peninsula across the Straits of Otranto. Since the Constitution was promulgated a customs union has been decreed and the Albanian forces have been fused with the Italian army. Economic penetration of the newly conquered country goes on apace, over two billion lire having recently been voted for land reclamation and road building. Special interest is being displayed in exploiting Albanian oil deposits. Though of an inferior grade, Albanian oil is quite attractive to a nation as autarchic in temper as Italy. Production has been accelerated since 1935, almost the entire output having been absorbed by Italy even prior to the conquest. In all essentials, therefore, Albania, although enjoying the formal status of an independent kingdom allied to Italy in a personal union, has become just another Italian colony.

Armaments and National Defense

Fighting Forces: the Army. For a regime as aggressive and imperialistically minded as Fascism the augmentation of the nation's military might has been a supreme requirement. Italy has three distinct fighting services, viz., the army, the navy, and the air force, each separately organized under a national ministry. In addition there is the Voluntary Militia for National Security which, although closely affiliated with the army for defense purposes, has, as indicated elsewhere,[1] a separate national staff and commander. The army is recruited through a system of conscription which embraces all able-bodied males between the ages of 21 and 55. The normal period of initial training for the infantry recruit is 18 months. Thereafter he joins the reserve subject to mobilization whenever a national emergency requires the calling up of the recruit class to which he belongs. Occasionally reservists may also be called up for brief repetition courses under army officers or officers of the Voluntary Militia. The nation suffers from no dearth of man power; the annual levy of new conscripts numbers more than 300,000 and the average class of reservists totals about 250,000. Although the number of men under arms in normal peace-time periods is about 500,000, this figure has been more than doubled since September, 1939. In

[1] See p. 665.

case of general mobilization it is estimated that recruits and reservists subject to the call to the colors would total more than 7,000,000. At the outbreak of the European War in September, 1939, the peninsular forces in active service were divided into two army groups, one commanded by the Prince of Piedmont and the other by Marshal Rodolfo Graziani, hero of several colonial wars.

The Navy. In the hierarchy of European naval powers, Fascist Italy's actual and projected tonnage probably places her close to France in the race for second place. Spearhead of the navy are the two newly commissioned 35,000-ton battleships, the *Vittorio Veneto* and the *Littorio.* There are also four older capital ships, the *Cavour,* the *Cesare,* the *Doria* and the *Duilio,* the first two having recently been reconditioned. An intensive program of naval construction since 1932, centering upon scouts, destroyers, and submarines, has brought Italian naval armament well beyond 500,000 tons. Excellent bases exist at La Spezia, Taranto, Venice, and Pantelleria. For administrative purposes the naval command is divided into four principal departments, two for the Tyrrhenian Sea, and two for the Adriatic.

The Air Force. The air arm has been especially pampered by Fascism, the regime having organized it as a separate fighting force in 1925. In 1935 there were about 2000 planes in commission and the air personnel officially included some 26,000 officers and men. New construction and replacement has been greatly accelerated since the Ethiopian and Spanish adventures and Italy's air armada now ranks with the greatest in Europe. Evidence of the importance which Fascism attaches to this branch of the fighting forces may be secured from the aviation estimates in recent budgets. In the latest budget, that for 1939, the appropriations for the air service totalled approximately two and one-quarter billion lire. This sum compares favorably with the army appropriations of three and one-half billions and the naval appropriations of two and three-quarter billions in the same budget. Equally significant is the fact that the aviation appropriations are increasing at a much faster rate than those for the other two services.

Administration. The fighting services are co-ordinated in various ways. Responsibility on the part of the technical head of each service is usually owed directly to the Head of the Government. Mussolini, moreover, is almost invariably the titular head of each of the three defense ministries. Inter-service administra-

tive co-ordination and the necessary correlation between the fighting services and national activity as a whole is maintained by the Supreme Commission of National Defense. The executive committee of this Commission consists of the Head of the Government and the various Ministers. They are aided by an advisory committee consisting, among others, of the National Secretary of the party, the chiefs-of-staff of the armed forces and of the Voluntary Militia, the admirals, the air and army marshals, and the head of the Civilian Mobilization Committee. The latter body, as its title may imply, exists to mobilize and utilize the nation's economic and technical resources for military purposes.

A Nation in Arms. It would be a mistake to assume that the organized fighting services and their auxiliaries exhaust Fascism's formal preparation for war. The regime looks upon the entire nation as a military engine. It believes that a modern great power should be placed upon a perpetual war footing, its entire man power and resources subject to instant mobilization. It believes that a nation in arms is the *sine qua non* of national survival in our day and it quite frankly admits that its policies and its economic and governmental apparatus have been especially adapted to attaining such a condition. A specific application of this theory of total mobilization is to be discerned in Fascism's program of military training and instruction for Italian youth. This program has been greatly elaborated since 1934 and now embraces all male youth between the ages of 6 and 21. From 6 to 18, instruction is designed to inculcate the military character and to train the young for arms-bearing purposes. Between 18 and 21 general courses in the art of war and special courses relating to each of the various fighting forces are offered. Responsibility for the instruction is shared by the local educational authorities and officers of the youth and party organizations, of the Voluntary Militia, and of the regular services. Supervision of the entire program is intrusted to an inspector-general for pre-military training whose office was created in 1934.

Increased Preparedness. The wars for the pacification of Libya, the conquest of Ethiopia and Albania, and the Spanish adventure have somewhat impaired the efficiency and the equipment of the Italian military machine. This fact may serve to explain, in part at least, why Italy decided to remain neutral at the outbreak of the European conflict in September, 1939. Great efforts are, however, being made to stimulate industrial produc-

tion, promote self-sufficiency in essential raw materials, augment and perfect military equipment, and generally bring the Italian armed forces up to the standard of size and performance required by the current situation in Europe. Even so, some time must apparently elapse before the Italian high command is convinced that in a military sense Italy is altogether prepared to intervene successfully in a major military struggle.[1]

Fascist Finance

Expenditures and National Debt. Fascism's internal and foreign policies have been costly. National expenditures, which amounted to 22 billion lire in the year when the regime came to power, dropped to about 19 and one-half billions in 1928. Thereafter, however, they climbed sharply until they reached some 41 billions in 1937. As a consequence, the national budgets, which were balanced and even made to yield a slight surplus between 1924 and 1929, became seriously unbalanced after that year, excess of expenditures over revenue mounting until a gross deficit of some 16 billion lire was reached in the single year of 1937. This sum exceeded by exactly two-thirds the actual revenue secured in that year. The deficit for the subsequent year, 1938, amounted to about 11 billions and for 1939 it was estimated that the deficit would amount to about 5 billions. The initial deficits were incurred chiefly as a result of the increased public obligations resulting from the economic depression; their augmentation after 1934 is to be attributed to the Ethiopian campaign, to the public works program, to rearmament, and to the general policy of empire development.[2] Borrowings to cover most of the deficits have been almost exclusively internal, no foreign loans having been contracted since 1925. At the end of 1935, Italy's public debt stood at approximately 150 billion lire,[3] to which must now be added the deficits since created. A considerable portion of this debt, some 50 billions at least, represents the total of amortization and interest charges which the Italian government will pay out in the form of annuities over some 40 years to extinguish

[1] Many of the data on the Italian military forces were secured from the League of Nations *Armaments Yearbook* (Geneva, 1936), pp. 479-549. Some of the more recent naval data are derived from the U. S. Naval Institute *Proceedings*, vol. 63[1] (May, 1937), p. 735; vol. 63[2] (Nov., 1937), p. 1650; and vol. 65 (July, 1939), p. 1066. Recent budgetary figures come from the *Bollettino delle Assemblee Legislative*, series 2, XIII (July, 1939), pp. 177 ff. Italy entered the European War June 10, 1940.

[2] W. G. Welk, *Fascist Economic Policy* (Cambridge, Mass., 1938), pp. 220 ff.

[3] Royal Institute of International Affairs Information Department, *The Economic and Financial Position of Italy*, 2nd ed. (London, 1935), pp. 55 ff.

loans contracted to finance such activities as the reclamation and public works projects. Since the proceeds of the loans for which these payments are to be made have presumably been invested in capital assets, the deadweight debt is thus appreciably reduced.[1] Nevertheless, as it stands, the debt represents a serious potential burden for a state whose national income and wealth are as restricted as those of Italy.

Taxation and Revenue. The national tax structure has been gradually expanded to meet the increasing fiscal needs. The principal sources of tax revenue at present may be identified as follows: (1) two forms of real estate tax, one of 10 per cent on income from the use of unimproved land and another, with an equal rate, on the rental value of buildings and improvements; (2) various forms of income tax on investments and earned income with rather high progressive rates and low exemptions; (3) inheritance taxes rising as high as 50 per cent; (4) an extraordinary variety of taxes on the transfer of wealth, including a general sales tax; (5) import and export duties; and (6) taxes on the manufacture of such products as alcohol, sugar, gas and electricity, and liquors. A relatively unimportant, but unusual, feature of the tax structure is the special levy on bachelors, introduced in 1926, with a fixed annual rate amounting to as high as 100 lire.[2] In addition the government secures appreciable revenue from state owned and operated utilities such as the railways and the communications system, from a variety of monopolies such as tobacco, salt, quinine, and matches, and from publicly conducted lotteries. Total income from all revenue sources averaged about 20 billion lire between 1931 and 1935. One of the extraordinary operations for financing the Ethiopian campaign in 1936 was a law requiring all owners of real estate to subscribe to a special state loan in an amount which was not less than 5 per cent of the assessed value of their property. This loan is to be paid off over a period of 25 years by a special assessment on real estate.[3] In 1937 the Government also made a special levy of 10 per cent on the paid-up capital and surplus of all corporations and partnerships.[4] With these special levies the public exchequer's demands on the national economy has about reached a limit beyond which it will be dangerous to go; nevertheless in May, 1939, the Finance Minister, Count Thaon di Revel, an-

[1] For the nature of these annuities see the same work, Appendix VI.
[2] See *Tax Systems of the World*, 7th ed. (Chicago, 1938), p. 311.
[3] Welk, *op. cit.*, p. 228.
[4] *Ibid.*, p. 229.

nounced that further increases in the real estate tax burden were imminent.[1]

Fascism—A Balance Sheet

Fascist Gains. Fascism's record must certainly discountenance any charge that it has been lacking in energy. Among contemporary governments, few have displayed more energy. The results of that energy, moreover, loom large on the Italian horizon, exhibiting themselves in momentous political, economic, and social changes, in a considerable degree of material progress, in an expanded national territory and in greater national influence in world affairs. Nor can the more intangible gains of Fascism's rule be ignored. Not since the days of the *risorgimento* has the Italian national consciousness been so stirred as at present. Almost all Italians, even those resident in foreign lands, take pride in the nation's achievements, in the unwonted respect which Italy evokes among the European chancelleries and in her imperial prowess. Gone, too, is much of the local particularism and the political indifference which often characterized Italians of another day, especially of the lower and lower-middle classes. In their place have come a vociferous patriotism, pride in physical fitness and alertness, a dedication to national efficiency, and a general toning up of the national morale.

The Ledger's Debit Side. Offsetting these gains are some important liabilities. As we have already noted, the material and diplomatic progress of the regime has meant tremendous outlays of capital and a mortgage upon the future which the vulnerable economy of Italy will find it difficult to endure. To avert national bankruptcy, the population will be called upon for many sacrifices. The middle classes will have to bear an augmented tax burden for an indefinite period while the working-class elements must suffer a reduction in an already low level of income. It is also quite clear that although many of the policies to which Fascism has dedicated itself are full of glamor and conducive to prestige, they are not necessarily conducive to the permanent interests of the nation. The immense outlays being made for colonial development are speculative in the extreme; and the extraordinary emphasis upon militarism and national preparedness may make a military machine out of Italy but hardly a nation whose principal aim is the prosperity and welfare of the citizens.

[1] See his remarks to Chamber of Fasces and Corporations on the annual budget in the *Bollettino delle Assemblee Legislative,* series 2, XIII (July, 1939), pp. 178-179.

The Effects of Dictatorship. Nor has Fascism escaped the deleterious consequences of the political system which it has erected. That system, despite the elaborate administrative, partisan, and corporative structures, is clearly a dictatorship whose authority rests ultimately upon force and the denial of liberty. However competent and benevolent Signor Mussolini's administration may be, his dictatorship, like others in history, has destroyed respect for political morality and constitutional restraint. It has been responsible for the corrosion of civic initiative and the decay of all forms of local self-government. It has destroyed objectivity in the discussion of public problems even among the nation's intellectuals, and has placed a premium upon sycophancy and the distortion of truth. To the dictatorship, too, must be charged the moral or physical exile of some of Italy's leading intellectuals and the reduction of the people as a whole to a condition of political tutelage which is more characteristic of a medieval despotism than of a twentieth-century commonwealth.

Fascism's Future. As a dictatorship, moreover, Fascism faces what is at best a dubious future. The history of human government proves that dictatorships are notoriously ephemeral. Nor do the changes which are today being effected in the scope of governmental affairs offer hope that the future will be any more kind to dictatorship than the past. For a time the augmentation of the State's responsibilities may appear to offer monopolistically inclined politicians new sources of power and influence. Such at least is the case in Italy today. Ultimately, however, the expansion of the State's province must prove inimical to the hopes of just such politicians. The collective State's demands for technical competence and bureaucratic autonomy, and the pressure of innumerable conflicting political interests which such a State generates, produce a problem of government for the solution of which the centripetal tendencies and essentially primitive organization of a dictatorship are but poorly adapted. Unless the dictator be truly omniscient and omnicompetent, he is likely to be overwhelmed by the task before him.

Problem of Mussolini's Successor. But Fascism's problem for the immediate future is the more prosaic one of providing a successor to its present dictator. As noted elsewhere, the Fascist succession has been legally provided for since 1928 by the law authorizing the Fascist Grand Council, with Signor Mussolini's approval, to draw up a list of candidates for the Headship of the Government. From this list the king is to select *il Duce's* eventual

successor. Rumor has since picked this or that candidate to take the helm when mortality claims the present leader. At the moment the favored candidate appears to be Count Ciano, the Foreign Minister, who is *il Duce's* son-in-law. But a legal succession in a regime founded on violence, and continually preaching it, is an unlikely possibility. Signor Mussolini's eminence and his firm hand may now keep his political satellites in proper subjection; but once his presence is removed and the glittering prize is open, the jealousies and rivalries which seethe beneath the surface will unquestionably break forth and produce a contest for power in the best Fascist tradition. Moreover, even if the transition to new leadership were made with tolerable success, there is little assurance that Italy will be fortunate enough to secure a man like Signor Mussolini; for men with his political cunning are quite rare. Yet whatever stability the Fascist dictatorship is likely to enjoy in the immediate future depends upon its ability to secure just such a man. Truly whatever other liabilities may be attributed to Fascism, the chief one is the virtual certainty that it cannot solve satisfactorily the problem of providing a successor to its present leader.

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RUSSIA—THE U.S.S.R.

BY *Michael T. Florinsky*

PART I. RUSSIA BEFORE THE BOLSHEVIK REVOLUTION

CHAPTER I. IMPERIAL RUSSIA [1]

Historical Background of Absolutism

Beginning of the Russian State. The early history of the Russian State contains many elements of uncertainty. The Grand Duchy of Kiev, the cradle of the future empire, made its appearance on the Dnieper in the second half of the ninth century and up to the middle of the twelfth exercised a vague quasi-patriarchal jurisdiction over a number of principalities and city-states scattered along the rivers of the Russian plain. The pressure of the Asiatic nomads who invaded the broad expanses of the southern steppes, followed by the decline of the once profitable trade between Kiev and Constantinople and the East, led to the removal of the capital to Vladimir, further to the north-east (1169). The supremacy of Vladimir among the Russian principalities was, however, even more precarious than that of Kiev. In the second quarter of the thirteenth century Russia was conquered by the Mongols, who moved irresistibly westward from the uplands of Central Asia. The "Tartar yoke," as this period is traditionally known in Russian history, lasted for over two centuries. Although the effective control of the Mongol khans over their Russian domain was practically suspended by the middle of the fifteenth century and was actually terminated somewhat earlier

[1] The present study was specially written for the volume *The Governments of Continental Europe*. It was completed in the late spring of 1939 and in view of the timeliness of the subject was published separately under the title *Toward an Understanding of the U.S.S.R.* in June, 1939. New material has been added in the present version to meet recent developments.

The dates in Chapters I and II are given according to the old Russian calendar which in the twentieth century is thirteen days behind the western calendar. In subsequent chapters the western calendar has been used.

It is my pleasant duty to express my sincere gratitude to Mrs. Cecil Killien for her valuable assistance in preparing the text.

than 1480, that year is usually given as the date of Russia's liberation from foreign rule. It was chiefly because of the disintegration of the Mongol Empire that Russia was finally able to regain her status as an independent state.

Unification under Moscow. The Tartar rule was an unhappy period in the history of the country. The hardships of foreign domination were aggravated by the evils inherent in the political organization of a land divided into a number of small quasi-independent principalities struggling for political leadership. From the early part of the fourteenth century the Grand Dukes of Moscow, who were also Grand Dukes of Vladimir, became the central figures in the painful and tortuous process of the unification of the country. They leaned heavily on the assistance of the Mongol rulers whose favors they courted; they also found powerful support for their dynastic ambitions in the landed aristocracy, the *boyars,* and in the Church, which had accumulated immense landholdings. The landowners, who were the first to suffer from internal strife among the princes, naturally gravitated toward the new political center, Moscow. The emergence of the Muscovite absolutism may be traced to the last years of the rule of Vasili II of Moscow (1425-1462) who, after a protracted and bloody struggle with other princes, succeeded in establishing Moscow's political supremacy.

Influence of the Church. The creation of a national Russian State was favored by the *de-facto* emancipation of the Russian Church from its dependence on Byzantium. Christianity came to Russia from Constantinople at the end of the tenth century. Until the middle of the fifteenth century Russia was considered as a metropolitanate, ruled in ecclesiastical matters by the Patriarch of Constantinople, who consecrated the Russian metropolitan. The breach between the Russian and the Byzantine churches occurred after the Ferrara-Florence Council (1438-1439) when the Greek Church accepted the union with Rome. Moscow refused to bow to this decision and, although the Greek Church eventually repudiated the union, the Russian metropolitans from 1448 on, while nominally elected and consecrated by a council of Russian bishops, were actually appointed by the Moscow Grand Dukes and, later by the Tsars. With the establishment of the Russian Patriarchate in 1589 the Russian Church became officially autocephalus. While Mongol influences undoubtedly also contributed to the growth of autocracy, Byzantine tradition had an important part in framing Muscovite absolutism, for the Church

invariably fought for the preservation of the unity of the Russian metropolitanate and emphatically proclaimed the divine origin of the secular power.

Muscovite Absolutism. In the second half of the fifteenth century Muscovite absolutism had definitely come into existence. Political authority over a unified country was concentrated in the hands of the Moscow Grand Dukes who ruthlessly exterminated whatever independence the landed nobility had enjoyed in the past. The Mongol rule was gone. The Russian Church, for all practical purposes independent of Constantinople (which fell under the Turkish domination in 1453), became an obedient tool of the occupants of the Moscow throne. In 1547 Ivan IV the Dread officially assumed the title of Tsar, a title loosely used by his predecessors. The revolutionary era, beginning early in the seventeenth century and known as the Time of Troubles, failed to produce any important change in the political structure of the Russian State and the founder of the Romanov dynasty, Tsar Michael, who came to the throne in 1613, was clothed with all the traditional powers of autocracy. But at the beginning of the eighteenth century came the reforms of Peter the Great, reforms that were from many points of view a definite breach with the past. However, while they introduced a number of institutions that survived until the Revolution of 1917, they did nothing to detract from the authority of the Crown whose prestige was further enhanced by Peter's assumption of the more resounding title of Emperor (1721). Nor were any important modifications in the structure of the central government introduced by Peter's successors in the eighteenth century. The complexity of the administration was growing with the rapid expansion of the national territory and the continuous appearance of new problems demanding solution, problems that were dealt with according to the light of St. Petersburg chanceries, which usually meant very badly indeed. The unflattering description of the Russian government as a despotism tempered by anarchy, that is by inefficiency and lack of co-ordination between the various organs of administration, was a fairly accurate statement of the conditions prevailing at the beginning of the nineteenth century.

The Reforms of Speransky and of Alexander II

Alexander I. Emperor Alexander I (1801-1825) had little admiration for the Russian form of government which he regarded as despotism; he was continually scheming for the intro-

duction of a constitutional monarchy, to him the only "true monarchy." Of the several projects of constitutional reform prepared during his reign, however, only one had any influence upon the organization of the Russian government. M. M. Speransky, who enjoyed the confidence of the Emperor, was entrusted in 1808 with the task of drafting a comprehensive plan of reorganization. The ablest statesman Russia ever had, Speransky produced in 1809 a detailed report which is considered by the Russian constitutional lawyers to be one of the outstanding documents of its kind. The plan of Speransky, based on the strict separation of powers—legislative, judicial and executive—provided for a remarkably logical structure of institutions to be freely chosen by the population, although Speransky did not contemplate the emancipation of the serfs, who were therefore to remain unenfranchised. The Emperor, who stood at the head of the entire governmental structure, was to be assisted by an advisory body, the State Council, which was to consider every measure, whether legislative, judicial or administrative, before it was submitted to the head of the government. The executive branch of the government was to be reorganized by putting each ministry under a minister responsible for the work of his department; by delimiting carefully the jurisdiction of each ministry; and by removing excessive centralization within the departments themselves, thus relieving the ministers of a mass of routine work so that they might devote their time to the more important problems.

The State Council and the Ministries. The new State Council actually came into existence on January 1, 1810, and the ministries established in 1802 were reorganized on June 1, 1811. The major part of the contemplated reform, however, was abandoned. The resumption of the war against Napoleon and Speransky's sudden disgrace in March, 1812, brought the process of reorganization to an abrupt end. Modest as were the changes accomplished they were not without effect upon the constitutional machinery of Russia. The Manifesto of January 1, 1810, became the source of article 47[1] of the Fundamental Laws which proclaimed that "the Russian Empire is governed on the firm foundation of the laws . . . emanating from the Autocratic Power (the Crown)." This article was construed to mean that every bill was to be submitted to the deliberation of the State Council and that once enacted into law it was to be binding on the monarch so

[1] Article 84 in the revised edition of 1906; reference to autocratic power was dropped.

long as it was not repealed. Nothing, however, prevented the Emperor from changing the laws. He nominated the members of the State Council and was under no obligation to follow the advice tendered by the assembly. Therefore no effective limitation of autocracy was imposed by the constitutional changes of 1810. The reorganization of the ministries was of greater practical importance. It brought into existence that modernized Russian bureaucracy which very largely and not entirely without success governed the Empire in the name of the tsar until the regime was engulfed in the Revolution of 1917.

Nicholas I. The reign of Nicholas I (1825-1855), which opened with the ruthless suppression of the well-intentioned but poorly organized and badly executed revolutionary uprising of a group of aristocrats and liberals known as the Decembrists, was a period of extreme reaction, a regime sternly administered by the unimaginative methods of the drill sergeant. Yet it was not entirely barren of results from the point of view of the organization of government. Speransky returned to active political life and undertook the gigantic task of codifying the Russian laws, which had never been brought together since the publication of the Code (*Ulozhenie*) of 1649, a collection that was inadequate even at the time it was issued. Speransky's difficult enterprise was completed in 1833 with the publication of (1) the "Full Collection of the Laws of the Russian Empire" which contained all the legislative enactments from those embodied in the Code of 1649 to those issued in the reign of Alexander I, and (2) "The Code (*Svod*) of Laws of the Russian Empire," a systematic collection in fifteen volumes of the laws still in operation. Arrangements were also made for the later amendment and revision of these collections. For the first time in the history of the country it became possible to ascertain what actually were the laws governing the Empire.

Reforms of Alexander II. During the long rule of Nicholas I there was growing recognition of the fact that far-reaching reforms could not be indefinitely postponed and the necessity of a change was admitted by the Emperor himself. Reform was not undertaken, however, until the reign of his successor, Alexander II (1855-1881) and was then at least in part due to the rude shock of Russia's crushing defeat in the Crimean war. The so-called Great Reforms of Alexander II, "The Tsar Liberator," comprised the emancipation of the peasants (February 19, 1861), the reorganization of the *zemstvo* or institutions of local govern-

ment (1864), the modernization of the judiciary (1864), the revision of the structure of municipal government (1870), the introduction of conscription to be borne equally by all social groups (1874) and to include the nobility, who since the eighteenth century had been exempted from compulsory military service. Measures were also taken for the unification of the budget, which for the first time was made public (1862). The universities, all of them State institutions, received a considerable degree of autonomy in their inner organization (1863). Although these reforms were of paramount importance and opened to Russia the road toward progress and development on which the other European nations had preceded her, they did nothing to limit the autocratic powers of the Crown. The persistent demands of the various social groups, especially of the nobility, who were more likely to gain a hearing, for the creation of an elective representative assembly were invariably rejected. It became clear that the Great Reforms had stopped short of the establishment of a constitutional monarchy. The widespread feeling of disappointment and discontent stimulated the activities of the underground revolutionary organizations and a number of terroristic attempts culminated on March 1, 1881, in the murder of Alexander II.

The Loris-Melikov "Constitution." His successor, Alexander III (1881-1894), had little liking for constitutional reforms. On the morning of the fatal day of March 1st Alexander II had approved the project of Count M. T. Loris-Melikov for the creation of a purely advisory committee consisting of members nominated by the Crown and those elected by the institutions of local government. The committee was to examine the bills which were then to be submitted to the State Council. The committee's decisions, however, were to be binding on neither the State Council nor the Emperor. For reasons that it is difficult to comprehend this modest "concession" to public opinion is often referred to as the "Loris-Melikov Constitution." It was shelved after Alexander II's murder and Alexander III proclaimed on his accession to the throne his unreserved devotion to the immovable principles of autocracy. To them he remained faithful throughout his reign.

The Constitutional Changes of 1905 and 1906

Nicholas II. Nicholas II (1894-1917), the son of Alexander III, fully shared his father's aversion to a constitutional mon-

archy. The hopes for reform which were revived after the death of Alexander III were immediately shattered by Nicholas's contemptuous reference to them as "senseless dreams." Under him the regime of political reaction was, if possible, further intensified. Police measures multiplied and increased in severity, stimulating the activities of the revolutionary organizations and the discontent of the liberal groups. In 1904-1905 Russia was defeated in the Russo-Japanese War and the revolutionary movement made rapid progress, reaching its zenith in the autumn of 1905. The country was in a state of turmoil. The peasants burned down the manor houses and divided the large estates among themselves. The army in Manchuria displayed a rebellious spirit. The strike movement was rapidly spreading among the industrial workers. The liberal groups were clamoring for constitutional reforms. The Emperor attempted to weather the storm by announcing on August 6, 1905, the impending election of a newly-created assembly, the State Duma, which however was to function in a purely advisory capacity. This gesture failed to produce the desired effect. Revolutionary disturbances continued to grow in volume. A general strike took place in October and Soviets or Councils of Workers' Deputies sprang up in the capital and in other cities. Further concessions from the Government were imperative.

Manifesto of October 17, 1905. The Imperial Manifesto of October 17, 1905, granted to the population the fundamental civil liberties—freedom from arbitrary arrest, freedom of opinion, of the press, of assembly, and organization. The Manifesto also promised the extension of the franchise for the election to the State Duma and announced the "immutable rule that no law shall become effective without the approval of the State Duma and that the elected representatives of the people shall be given the opportunity to participate effectively in the control over the activities of the officers appointed by Us (the Crown) to insure the conformity of such activities with the law." The promised extension of the franchise was enacted on December 11, 1905. In the meantime the revolutionary movement had subsided somewhat and the Government, headed by Count S. J. Witte, retreated slightly from its previous position. The Manifesto of February 20, 1906, revised the charter of the State Council "to bring it in line with the principles announced in the Manifesto of October 17, 1905." In fact, however, it violated if not the letter at least the spirit of the October Manifesto by laying down

the rule that legislative bills must be approved not only by the Duma but also by the State Council. The old Fundamental Laws were revised, amended and reissued on April 23, 1906. These revised statutes are regarded by some authorities as forming the Russian Constitution, although the term "constitution" was never officially used.

The Monarch

The Constitutional Monarchy. While the changes of 1905-1906 imposed definite limitations on the legislative powers of the Crown the Emperor continued to occupy a central position in the constitutional machinery of the State. According to Article 4 of the Fundamental Laws "To the Emperor of all the Russias belongs the supreme autocratic power. To obey his commands not merely from fear but according to the dictates of one's conscience is ordained by God himself." The term "autocratic power," which appeared not only in Article 4 but also in Article 6, and even more the expression "unlimited Autocrat" in Article 222 have given much trouble to the Russian constitutional lawyers who have, however, displayed great ingenuity in attempting to reconcile the irreconcilable: autocracy with constitutional monarchy. The most satisfactory explanation would seem to be that the use of the term "autocratic" and "Autocrat" was due to defective drafting, of which the Fundamental Laws offer many instances.

The Crown and the Legislature. The participation of the Crown in the legislative process was safeguarded by the provision that "no bill shall acquire the force of a law without the approval of the State Duma and the State Council and the sanction of the Emperor." The latter had the exclusive right to initiate bills affecting the Fundamental Laws. To the Emperor also belonged the right to convoke and prorogue the legislative chambers and to dissolve them, with the sole limitation that they should be convoked every year. The Emperor had the right of legislative veto, a prerogative that Nicholas II used only twice. Half of the members of the upper chamber, the State Council, and its president were appointed by the Emperor.

The Crown and the Executive. The control of the executive branch of government was entirely in the hands of the Emperor. He was empowered to issue decrees dealing with administrative matters, provided that such decrees were not in contradiction with the law. He appointed the higher government officials, and

the ministers who formed the government were responsible to him alone. As the titular head of the administrative machine the Emperor held wide powers over the government officials upon whom he conferred distinctions or to whom he meted out punishment. He enjoyed the prerogative of conferring titles and decorations. It was the Emperor's exclusive right to proclaim a "state of emergency" when ordinary civic guarantees were suspended and the discretionary powers of the administrative officers were greatly increased. A "state of emergency" was the normal regime in the Russia of 1905-1914. The Emperor was also the head of the military forces. The conduct of foreign relations, the declaration of war and the conclusion of peace, the negotiation of treaties and diplomatic relations in general were among his prerogatives. Justice was administered in his name and he enjoyed the right of pardon or revision of sentences. The Emperor was the official head of the Russian Church which was governed through the Holy Synod. The Emperor himself must be a member of the Greek Orthodox Church of which he was the official protector. The throne passed by inheritance, according to the principle of primogeniture, in the male line of the Romanov family and, in case of its extinction, in the female line.

The State Council

Structure of the State Council. The State Council was the upper house of the Russian parliament. Half of its members were elected by certain social groups and institutions and the other half were appointed by the Crown. The law divided the State Council, very "inelegantly" according to one authority, into the "State Council" (a legislative body) and the "Departments and Special Boards of the State Council," a confusing terminology where "State Council" appeared both as the whole and as a part. The "Departments and Special Boards," purely administrative institutions, consisted exclusively of the appointed members of the Council and had nothing to do with its legislative work. The functions of the two component elements of the State Council were entirely different and the law made no provision for the integration of these activities.

Appointed Members of the State Council. The appointed members of the State Council were divided into active members, that is, those participating in the work of the Council, and inactive members who did not take part in the deliberations of that body but merely enjoyed an honorary title. The number of ap-

pointed active members was not to exceed that of the elected members (one hundred). The government adopted the practice, the legality of which has been often and rightly questioned, of issuing on January 1st of each year a list of active members. This procedure effectively destroyed the permanency of tenure granted to the appointed members by the law which provided that they could not be removed from office except at their own request. The transfer to the inactive list was for all practical purposes equivalent to dismissal and in the hands of the executive was a powerful weapon for exercising pressure upon the appointed members of the upper chamber. Until the outbreak of the War of 1914 the Crown seldom used its power to transfer members of the Council from the active to the inactive list. During the war, however, such transfers became numerous. Assuming a distinctly punitive character they undermined whatever little prestige the State Council might have enjoyed.

Elected Members of the State Council. The elected members of the State Council were chosen separately by each of the following six groups: the clergy (6 members), the *zemstvo* or institutions of local government (56 members), the nobility (18 members), the Academy of Science and the universities (6 members), commerce and industry (12 members), the diet of Finland (2 members). The election of the representatives from the clergy was largely nominal, the actual selection of the members of the upper chamber being determined either by the local bishops or by the Holy Synod. The representatives from the *zemstvo* were elected directly, all the others indirectly, that is, in two stages. For instance, the universities and the Academy of Science chose delegates who assembled in the capital and elected from among their number six members of the State Council. Particularly high property and other qualifications were required of the candidates who aspired to represent the *zemstvo* in the upper chamber, thus insuring representation from the well-to-do classes. The members from the *zemstvo* were elected for three years; all the others for a full term of nine years. One-third of the members from each group, however, were replaced every three years, the names of members to be retired being determined by the drawing of lots. The elected members of the State Council could not be considered as representing the country at large, either from a social or from a geographic standpoint. More than three-quarters of their number belonged to the wealthy landed proprietors of the central provinces, a group that also supplied a large majority of

the appointed members of the Council. As a safeguard against progressive, not to mention radical legislation, the upper chamber of the Russian parliament left nothing to be desired, but it had no claim to either a democratic or a representative character.

The State Duma

Franchise and the Law of June 3, 1907. The lower house of the Russian parliament, the State Duma, which came into existence by virtue of the Manifesto of October 17, 1905, and subsequent legislation, was, unlike the State Council, a purely elective institution. The relatively broad franchise provided by the Act of December 11, 1905, resulted in the election of an assembly with definitely liberal and even radical tendencies. The First Duma was dissolved after a few stormy weeks (June, 1906). The Second Duma, which met in the spring of 1907, proved to be even less manageable and was dissolved on June 3. On the same date the Government, headed by P. A. Stolypin, promulgated a law that greatly curtailed the franchise and made it possible for the authorities to manipulate the elections so as to achieve their political aims. The Act of June 3, 1907, was a flagrant violation of the Fundamental Laws which specifically provided that the election law could not be changed without the sanction of the legislative chambers. The Government, undoubtedly aware of the illegality of the measure it took, could find no better legal argument to justify it than to declare that the Tsar was using his "historic powers" and that he was accountable to God for the fate of the Russian realm! This Act controlled the elections to the Third and Fourth (which proved to be the last) Dumas. It introduced a form of election procedure that has often been described as the most involved and complex in the world. The resulting suffrage was not universal; nor was it direct or equal. Without going into the bewildering details of this ingenious puzzle of election procedure it may be noted that the electorate was divided into four main groups which were to choose separately their representatives to the electoral college that finally elected the deputies. These four groups were the landowners (other than peasants), the urban population, the peasants, and the industrial workers. There were further subdivisions within the groups of landowners and among the urban population and property qualifications played an important part in determining the right to vote. Direct elections, that is, voting for the deputies themselves, were held in only five cities (St. Petersburg, Moscow,

Kiev, Odessa and Riga). Everywhere else elections were indirect and were completed in two, three (industrial workers), or even four (peasants) stages. The three and four-stage elections were unknown in the law of any other country. The final choice of the deputies was decided at a general meeting of the electors in each province. The law provided that the electoral college must first choose one deputy from each of the groups into which the electorate was subdivided. The election of a deputy from among the industrial workers, however, was mandatory in only six industrial provinces (St. Petersburg, Moscow, Vladmir, Ekaterinoslav, Kostroma, and Kharkov). The rest of the quota of deputies for each province could be selected from among the members of the electoral college, irrespective of their belonging to one or another group. Since the landowning interests as a rule controlled the electoral college, these interests really decided who was to represent the industrial workers and the peasantry in the Duma. Under these conditions radical elements had little chance to send their spokesmen to the lower chamber. The Law of June 3, 1907, moreover, conferred upon the Minister of the Interior wide discretionary powers permitting him to split the electorate into small electoral districts on the basis of residence, property qualifications, or race. Each of these districts chose its own electors. The Government thus enjoyed practically unlimited opportunities for influencing the final outcome of the ballot, a privilege of which it made extensive use in the elections to the Third and Fourth Dumas. One consequence of these manipulations was the truly amazing increase in the number of priests among the deputies in the Third and Fourth Dumas and the noteworthy shift in their political allegiance. For a majority of the Russian clergy were obedient tools in the hands of their ecclesiastical superiors, who themselves were tools of the Government. The First Duma had 6 priests of whom 4 were either liberals or radicals; the Second Duma had 13 ecclesiastics, including 2 bishops, of whom 8 were liberals or radicals. The Third Duma had 45 and the Fourth 46 ecclesiastics none of whom belonged to the radical or liberal parties while the vast majority sided with either the Right or the Extreme Right.

Unrepresentative Character of the Duma. Determination of the number of deputies to be sent to the Duma by the basic electoral districts (the provinces) was arbitrary and capricious, the outlying territories receiving usually a smaller representation. Women were absolutely denied the franchise. It has been com-

puted that in the election to the Third Duma (1907) not more than fifteen per cent of the population were entitled to vote. The secrecy of the ballot was maintained through every stage of the complex electoral procedure.

Preponderance of Conservative Elements. Little can be said in defense of the Russian electoral system except that it achieved the purpose for which it was designed. The Third and the Fourth Dumas were just as conservative and almost as uniformly docile as their two predecessors were recalcitrant. Although there were still a number of liberals and a sprinkling of radicals, including the Bolsheviks, the control of the legislative assembly was definitely in the hands of the conservative parties.

The Powers of the Legislative Assemblies

Immunity of the Deputies. The powers of the legislative chambers, like the election procedure, were subject to a number of ingenious restrictions. In its internal organization the Duma was autonomous and elected its own officers, while the President of the State Council was appointed by the Crown. The complete freedom of speech and opinion granted to the deputies by Article 14 of the Statute of the State Duma and by Article 26 of the Statute of the State Council received in practice a restrictive interpretation, which considerably curtailed the traditional immunity enjoyed by the deputies in Western democracies. There are instances on record of members of the Duma being compelled to face legal prosecution for statements made from the rostrum of the legislative chamber. Freedom from arrest, without the consent of the house, another traditional prerogative of the members of parliament, was guaranteed only during the sessions and even this protection was withheld if a deputy was apprehended during the commission of the criminal act or "the day after." The members of both houses, moreover, could be brought before the Supreme Criminal Court to answer for breaches of the law committed by them in connection with the performance of their duties. The consent of the Emperor was required to institute such prosecutions.

Legislative Initiative. Individual members of the legislature did not enjoy the right of legislative initiative. A legislative bill could be introduced (1) by not less than 30 deputies, (2) by the committees of the Duma, and (3) by the Government, while the initiative in the revision of the Fundamental Laws was a prerogative of the Crown. Of the 2,197 bills that became law during the

lifetime of the Third Duma—the only one that completed its full term of five years under peace-time conditions—two were initiated by the State Council and 34 by the Duma. Government initiative was thus the normal source of the law.

Budget Powers. The control of the public purse has always been one of the cherished rights of parliament and the most effective method of preventing the abuses of the executive. The powers of the Russian legislative chambers in dealing with the budget were, however, distinctly limited. The Rules of March 8, 1906, which determined the rights of the State Council and the State Duma in budgetary matters, were modeled on the provisions of the Japanese constitution. According to this legislation the budget was divided into three parts. (1) Appropriations of the Ministry of the Imperial Court, of the two branches of His Majesty's Chancery, and provisions for the maintenance of the Imperial family were exempt from the jurisdiction of the legislature and could not be discussed. (2) A long list of appropriations and revenues based on laws, statutes and imperial orders were subject to the examination by the legislature in the matter of their legality, but they could not be either increased or reduced. (3) There were certain appropriations that could be both discussed and altered by the chambers. In the draft budget for 1913 the "iron-clad" appropriations (groups one and two) accounted for 1,048 million rubles, while the portion of the budget within the jurisdiction of the legislative chambers represented 2,158 million rubles. In case the budget was not duly passed by the beginning of the fiscal year the government departments continued to receive, by virtue of an order issued by the Council of Ministers, monthly appropriations within the limits of the budget for the previous year. Extraordinary appropriations necessitated by an emergency such as war or preparation for war were granted by an order of the Council of Ministers. The provisions of the Russian law dealing with the budget have been considered by many authorities to be a most flagrant departure from accepted constitutional practice.

Control Over the Executive. The State Council and the State Duma exercised no effective control over the executive, although they enjoyed the right of addressing to the Government questions and interpellations. The Ministers, however, could refuse to give the information requested in a question on the ground that this would be inexpedient and contrary to the public interest. If the explanation presented by a member of the Gov-

ernment was deemed unsatisfactory by a two-thirds majority of the house the matter was submitted by the President of the State Council to the Emperor with whom rested the decision as to whether any action should be taken against the minister who had incurred the displeasure of the chamber. It would be unwise to disregard altogether the effects of criticism voiced in the Duma in connection with the discussion of an interpellation (the State Council almost never made use of this right), for the members of the Government were naturally anxious to avoid an open conflict with the legislative chamber. Nevertheless the ministers were responsible to the Emperor alone and on occasion displayed open contempt for a legislative assembly that could do nothing to remove them from office.

Article 87

Emergency Legislation. A much-discussed feature of the Russian constitutional setup was Article 87 of the Fundamental Laws:

> During the recess of the State Duma, if exceptional circumstances call for a measure that requires legislative decision, the Council of Ministers shall report on it directly to the Emperor. Such measure, however, shall not introduce any change in the Fundamental Laws, or in the statutes of the State Council or the State Duma, or in the provisions concerning elections to the Council or the Duma. The operation of such a measure shall cease if the respective minister . . . shall not have submitted to the Duma within two months following the resumption of the session of the Duma a legislative bill corresponding to the measure adopted, or if it is rejected by the State Duma or the State Council.

Abuse of Emergency Powers. The provisions of Article 87, which had its counterpart in a number of European constitutions, were reasonably clear and were obviously designed to meet an emergency that might occur when the legislature was not in session. Unfortunately it became the practice of the Government to make a wide use of the powers granted to the Crown by Article 87 in flagrant disregard of its spirit and intent. A vast mass of legislation was enacted by virtue of Article 87 and although these measures were eventually submitted to the legislative chambers, because of the fact that they had been in operation, sometimes for a protracted period, the Duma was confronted with a *fait accompli* that made the repeal or even revision of such laws extremely difficult. How broad was the interpretation put by the government on the expression "exceptional circumstances" will

appear from one or two examples. Article 87 was invoked to change the title of the chief administrative officer in the Akmolinsk and Semiplatinsk Regions from "military governor" to "governor." It was used again to promulgate the Decree of November 9, 1906, which completely changed the structure of agricultural Russia, a measure of paramount importance that should certainly have been discussed by the legislative bodies. The most flagrant case of abuse of Article 87 occurred in March, 1911, when the State Council rejected a bill providing for institutions of local self-government in the Polish provinces of Russia. The bill, which was anything but radical and was approved by the Duma, was vetoed by the upper chamber on the ground that it did not sufficiently safeguard the interests of the landed nobility. Stolypin, President of the Council of Ministers, prorogued the State Duma and the State Council for three days and promulgated the measure under Article 87. It would have been difficult to display greater disregard for the principle announced in Article 84 of the Fundamental Laws that "the Russian Empire is governed on the firm foundation of the laws."

The Role of Parliament

Summary. To sum up, it must be said that the procedure of electing the members of the State Duma (to say nothing of those of the State Council) was highly imperfect, the franchise was restricted, the powers of the two chambers in legislative and budgetary matters were very limited and their control over the executive practically nil. Nevertheless the constitutional changes of 1905-1906 may be rightly regarded as an important landmark in the political history of the country. They were the first timid step in the direction of a constitutional form of government. Further progress on the same lines might have brought Russia along the path traversed by the Western European nations. The Government of Nicholas II, however, like that of the Muscovite tsars of the sixteenth and seventeenth centuries, almost invariably looked backward and not forward for inspiration and guidance. The humble beginnings of a democratic regime offered the Russian masses their first opportunity to take some part in the conduct of public affairs, to get their first taste of political education. Crippled by the flagrantly unconstitutional Election Law of June 3, 1907, and closely supervised by a hostile and contemptuous bureaucracy the State Duma was fated not to reach the status of a representative popular assembly. Its lack of real

roots in the country was convincingly demonstrated during the revolutionary year 1917.

The Council of Ministers

Origins of the Council of Ministers. The executive branch of the State government was headed by the Emperor and the actual work of administration was carried on by a huge army of officials under the supervision of central departments usually known as ministries. The heads of the central departments were members of the Council of Ministers, a body that first came into existence sometime between 1857-1861, but ceased to meet after 1882. It was revived on a new basis by the Imperial Decree of October 19, 1905, that is, two days after the Manifesto of October 17 promised Russia a constitutional regime. According to the preamble to the Decree of October 19 the ministers and other heads of central departments were directly subordinated to the Crown; it was through the departments over which they presided that the Crown carried on the administration of the country. The central departments were therefore integral parts of the administrative machinery and they all pursued the same object. The Council of Ministers was created to insure unity in the policies of the Government and to co-ordinate the activities of the heads of the various departments. Such co-ordination, the Decree pointed out, was made imperative by the creation of the State Duma.

The President of the Council of Ministers. The Council of Ministers, as has already been noted, was in no way responsible to the legislature and its inner unity was safeguarded by the authority of its President, who was given important duties as the representative of the Council. The ministers retained their right to report directly to the Emperor, but such reports were first submitted by the President to the deliberation of the Council. The law, however, provided that the above rule applied only to reports of "general interest"—an expression that is at best ambiguous—while reports not deemed of "general interest" might be presented to the Emperor by the respective ministers without consulting the Council or its President. Moreover, matters dealing with the Ministry of the Imperial Court, national defense, and foreign affairs were submitted by the Ministers concerned to the Council by special Imperial command, but this procedure was also followed in cases where the Ministers considered this necessary, or if the question under discussion involved other depart-

ments. The right of the Council of Ministers to suggest candidates for higher offices did not extend to appointments under the Ministry of the Imperial Court or to appointments in the army, navy, or diplomatic service. The result of these exemptions was that even the purely formal unification of administrative activities that the Decree of October 19 attempted to achieve was largely illusory, since several important branches of the administration were practically exempt from the control of the Council of Ministers. In practice the collective or joint character of the Council of Ministers remained fictitious and the dismissal of some of the ministers, including the President of the Council, did not lead to the resignation of the entire Government. In administrative matters the Emperor remained the supreme authority.

Other Organs of Central Administration

Central Administrative Agencies Acting in an Advisory Capacity or Independent from the Council of Ministers. While the ministries and the Council of Ministers were the chief organs of the central administration there survived side by side with them several other institutions that belonged to the same group. Such were the "Departments and Special Boards of the State Council" (to be distinguished from the State Council, as the upper chamber of the Russian parliament) which dealt with certain financial and other questions; the Army Council and the Admiralty Council, which advised the Emperor on military and naval matters; the Board of Guardians (*Openkunsky Soviet*), which managed the charitable and educational institutions of the "Department of the Empress Marie"; the Finance Committee, which discussed measures and policies bearing on credit and monetary matters. These organs functioned side by side with the Council of Ministers and either acted in a merely advisory capacity or performed definite administrative duties, sometimes even infringing on the rights of the legislature. Their very existence was something of an anachronism, which must be explained by historical reasons, and it further detracted from that co-ordination of administrative policies which was the primary object of the establishment of the Council of Ministers.

The Holy Synod. The administration of the Orthodox Church was in the hands of the Holy Synod, an ecclesiastical council created by Peter I in 1721, and it was dominated by a lay officer, the Procurator. The complete control of the Orthodox Church by the secular power, which was the result of a long

process of historical development, found its expression in Article 65 of the Fundamental Laws. This Article declared that "in church administration the Autocratic Power acts through the Holy Synod by It established." The creation of the Holy Synod by an act of the secular authority, the secularization of the church properties by Catherine II, and the Decree of 1803 which provided that ecclesiastical dignitaries were to be appointed to the membership of the Holy Synod only temporarily, thus depriving them of any security of tenure and often of the very opportunity to familiarize themselves with the business they had to transact—were all important steps in depriving the Church of the last vestiges of independence. The nineteenth century saw the rapid ascendancy of the Procurator of the Holy Synod who in 1904 was raised to the rank of a minister. Although officially entrusted with the task of safeguarding the legality of the decisions of the Holy Synod the Procurator became in fact the autocratic master of the Church and responsible to the Emperor alone. Under these conditions the Holy Synod, in spite of the ecclesiastical robes of its members, was hardly more than a purely bureaucratic institution, an obedient tool in the hands of the Government.

The Senate and the Judiciary

Evolution of the Senate. The governmental structure of Imperial Russia included a department, the "Governing Senate," whose place in the constitutional scheme it is not easy to determine. When the Senate was established by Peter I in 1711 it was a central governmental institution which dealt with legislative, administrative, and judicial questions. During the two centuries of its history the Senate gradually lost its legislative and most of its administrative functions while retaining those of judicial control. After the reform of the judiciary in 1864 the Senate was comprised of separate "departments" which were the higher court of appeal in both criminal and civil cases. In the twentieth century, although the principal functions of the Senate were those of a Supreme Court, including the publication and the interpretation of the laws, it also exercised a general supervision over the administrative machine. The senators, whose number was undetermined, were appointed by the Emperor. The Senate never met as a body, its work being carried on separately by eight "departments" of which five were judicial and three administrative, although the latter, too, were largely concerned with

judicial questions. Some of the "departments" held joint sessions, but the purely administrative functions of the Senate were relatively unimportant.

Modernization of the Judiciary in 1864. The thorough modernization of the Russian judiciary, which goes back to 1864, was one of the most successful and important of the "Great Reforms" of Alexander II. In the process of reorganization a system of law courts independent of the administration was established, and the judges were granted permanency of tenure and full freedom in the exercise of their duties. The more important criminal cases were to be tried by jury. The equality of all before the law was officially proclaimed and the special courts dealing with crimes committed by members of various social groups were, with a few minor exceptions, abolished. The uniform structure of the judiciary provided for three stages in legal procedure. The courts of the first and second instance dealt with the case as a whole, while the higher court of appeal concerned itself merely with questions of law. Minor infringements of the law were dealt with by the individual justices of the peace, as the court of first instance, and by the conference (*sezd*) of the justices of the peace, as the second. The more important cases came before the district court (*okruzhnoi sud*) and the court of the second instance (*sudebnaya palata*). Two "departments" of the Senate were the higher court of appeal. The proceedings of the courts were public, the parties were granted complete equality, and the bar or association of attorneys received legal recognition. The conduct of preliminary investigations was brought under the control of the courts and the public prosecutor.

Departures from the Principles of the Reform of 1864. It is generally admitted that the reform of 1864 was eminently successful in improving the administration of justice; unfortunately, however, its smooth operation was handicapped by later measures devised in a spirit incompatible with the ideas of the reform of 1864. The most important change was introduced by the Law of June 12, 1889, which transferred a large number of minor offenses committed by the peasants from the jurisdiction of the elected and irremovable justices of the peace to that of an appointed administrative officer, the *zemski nachalnik*. The strong agitation for the repeal of this law did not bear fruit until 1913 when an act passed by the State Duma and the State Council restored to the justices of the peace jurisdiction over the offenses committed by the peasants. The outbreak of the War, however,

prevented the carrying out of the new provision. There were other departures from the spirit of the Statute of 1864. The possibility of governmental pressure on the courts was provided by a law of 1885 which permitted the removal of judges for offenses other than misconduct in office, and by a law of 1887 which gave to judges power to order the hearing *in camera* of cases that might endanger public order, morality, religion, or the State. In spite of these departures from the principles of the reform bill of 1864 the administration of justice in Russia, according to authoritative opinion, was maintained on a high level.

Administrative Centralization

"The Russian State Is One and Indivisible." The control of the institutions of the central government extended over the entire territory of the Empire, with the notable exception of Finland. Article 1 of the Fundamental Laws of April 23, 1906, declared that "the Russian State is one and indivisible." The term "indivisible" did not mean that no part of the national territory could be transferred to the severeignty of another state, but merely that after the passing of the laws of 1906 such cession could take place only on the initiative of the Emperor and with the approval of the State Duma and the State Council. The first part of Article 1—"The Russian State is one"—conveyed no clear legal meaning. It was the enunciation not of a principle of constitutional law but of a program of administrative policy, the definite acceptance of centralization in preference to local autonomy.

Russification. The uniformity of the administrative institutions over the entire territory of the country and the rigid "Russification" of the regions inhabited by peoples of non-Russian blood and language was with but few exceptions the official policy the the Russian Empire. In a country like the United States, where the federal principle is written into the Constitution and where the question of States' rights *versus* those of the federal government continues to be very much alive, it is hardly necessary to argue that uniformity among the administrative organs and the supremacy of the central government over every manifestation of the nation's life is not a necessary condition of national unity. The principle of autonomy, which was occasionally admitted in Imperial Russia, played its part in facilitating the extension of her territory. The Ukraine, the Baltic Prov-

inces (now Latvia, Esthonia and Lithuania), Bessarabia, Russian Poland—all had enjoyed at times a varying degree of national autonomy which in every case eventually disappeared. The process of administrative unification, typical of pre-Revolutionary Russia, extended to Russia's vast Asiatic possessions. It did not, however, involve the semi-independent Asiatic principalities of Khiva and Bukhara, which since 1873 had been under the protectorate of the Russian Crown.

Curiously enough, the provision that "The Russian State is one and indivisible" was first introduced in the Fundamental Laws of 1906, only twelve years before the dismemberment of the Empire.

The Grand Duchy of Finland

Legal Position of Finland. The Grand Duchy of Finland occupied a peculiar position in the constitutional framework of the Empire. Article 2 of the Fundamental Laws of April 23, 1906, provided that "The Grand Duchy of Finland, forming an indivisible part of the Russian State, is governed in its internal affairs by special institutions based on special legislation." According to Article 26 "With the Imperial Throne of all the Russians are inseparable the thrones of the Kingdom of Poland and of the Grand Duchy of Finland." The territory of Finland was acquired by Russia from Sweden in three stages, in 1721, 1743, and 1809 and the creation of the Grand Duchy of Finland as an integral part of the Russian Empire goes back to the latter date. The exact nature of the legal relationship between Finland and Russia was obscure and highly controversial. From 1809 to 1863 Finland might be described as a part of the Russian State, governed by its own laws and having its own administrative and judicial institutions retained from the time when it was under the sovereignty of Sweden. As a rule the laws and institutions of the Russian Empire did not extend to Finland and the powers of the Crown in this part of its domain were limited, at least in principle, by the special legislation in force in the Grand Duchy. The chief representative of the Crown in Finland was the Governor-General who was also commander-in-chief of the troops quartered in Finland and president of the Finnish Senate, the highest administrative and judicial organ of the Grand Duchy. The Governor-General, who was appointed by the Emperor, was invariably a Russian. After 1826 there was also resident in St. Petersburg a Secretary of State for Finland, an office filled

with but rare exceptions by natives of the Grand Duchy. It was through this Secretary of State and not through the Russian Ministers that questions affecting Finland were submitted to the Emperor.

The Finnish Diet. A Finnish diet was called into being by Alexander I in 1809 but it did not re-assemble until 1863 when new elections were held according to the old Swedish law retained by Finland. Emperor Alexander II, who himself opened the diet, promised to maintain in Finland "The principles of constitutional monarchy inherent in the habits of the Finnish people." From 1863 on the diet met regularly. Its powers were defined by the Statute of April 3, 1869. This act imposed definite limitations on the prerogatives of the monarch by providing that certain legislation, including the Fundamental Laws of Finland, could not be changed without the consent of the diet. Finland, which was already endowed with its own executive and judiciary, thus had its separate legislature. The Russian Emperor, who was also Grand Duke of Finland, was an autocrat in Russia (until 1905-1906) but a constitutional monarch in Finland. The Grand Duchy, however, had no army and the conduct of its foreign relations was in the hands of the Emperor and the Russian Ministry of Foreign Affairs. The constitutional position of Finland was drastically changed by the Imperial Manifesto of February 3, 1899, which provided that the Crown might legislate for Finland in matters of "Imperial interest" after merely consulting the diet, whose advice, however, was not binding. The Grand Duchy rejected the Manifesto as an infringement of its constitutional liberties. There followed a period of severe friction which ended in the suspension of the Act of 1899 by the Manifesto of October 22, 1905, restoring the legal situation that existed before 1899. The revolutionary pressure was, of course, responsible for this revision of policies. On July 7, 1906, the diet was reorganized. The new Finnish Constitution introduced universal suffrage and abolished the former representation by separate "estates" (the nobility, clergy, burghers, and peasants).

Law of June 17, 1910. The Law of June 17, 1910, duly passed by the State Duma and the State Council, once more changed the situation. It provided that legislation binding on Finland should be enacted through the general channels (that is, the State Duma and the State Council) "if its effects are not limited to the internal affairs of that region." The Finnish diet was called to pass on such legislation in a purely advisory ca-

pacity. The Act of June 17, 1910, supplied a list of questions affecting Finland to be dealt with by the Russian legislature. The list contained such items as the contribution of Finland to the Imperial budget and taxation required to raise this revenue, regulations concerning military service, the determination of the curricula of Finnish schools, the associations, and the right of assembly, etc. Legislation on purely domestic affairs was left to the Finnish diet. This Act was a clear breach of the Finnish Constitution according to which the powers of the diet could not be modified without its own consent. The Russian Government neglected to comply with this requirement because it knew that the diet would refuse to renounce its constitutional rights. After the passage of the Law of June 17, 1910, Finland still retained its autonomy, although the latter was undoubtedly curtailed. Whether this law was merely a first step toward that administrative assimilation which had engulfed the autonomous institutions of the other border provinces of Russia is a question that must remain unanswered. The Revolution of 1917 made Finland an independent State.

The Social Structure

"Social Classes" and "Estates." In order to understand the character of the provincial administration of Imperial Russia it is essential to gain at least some knowledge of the country's social structure. In approaching this question one must first of all dismiss the familiar notion expressed in the Declaration of Independence that all men are born equal. Secondly, it must be emphasized that the term "social" is not used here in its customary meaning. The division of the population into social classes, which bears on the organization of provincial administration, had often in Russia no direct connection with the professional, business, or economic interests of the members of these classes. It would be more exact to speak of "estates," meaning by that groups of subjects of the Russian Crown who differed from the rest of the population in certain hereditary rights and duties. This definition, however, was no longer fully applicable in the second half of the nineteenth century and became even more misleading after 1905-1906, when a number of limitations attached to the lower "estates" were removed. Some of the "estates" had lost their hereditary character long before the reforms of 1905-1906 and had no corporate organization. Thus there gradually came into existence a large group of people who

did not belong to any "estate" and yet enjoyed civic rights. On the other hand, some of the "estates," retaining both their hereditary characteristics and their corporate organization, continued to perform important functions. The "estate" structure of Russia since the middle of the nineteenth century has been aptly described as a "crumbling temple" (*"donjon"* might have been a better term) whose shattered yet sturdy remnants were gradually submerged by the rising tide of democracy.

Their Origin. Social stratification crystallized in terms of hereditary rights and duties is a phenomenon familiar in the history of all European countries. In Western Europe the formation of "estates" was usually the result of organic development and their institutions became important political factors that effectively limited the powers of the Crown. In Russia the origin of the "estate" structure, which goes back to the middle of the seventeenth century, was entirely different. It was the direct outcome of the policies of the Muscovite government, which assigned definite duties to separate groups of the population and made the members of some of these groups jointly responsible for the performance of the obligations that rested upon their respective groups. An important remodelling of the social framework took place in the second half of the eighteenth century, during the reign of Catherine II, when a definite attempt was made to organize the "estates" on the basis of corporate self-government and to entrust to them a number of administrative and judicial functions. The institutions created by Catherine, although they suffered subsequently important modifications, continued to form the foundation of Russian provincial government until the Revolution.

The Four "Estates." According to the legislation officially in force before 1917 the entire population of the country was divided into four categories: (1) *dvoriane,* a term which in the absence of an adequate English equivalent is usually translated as nobles or gentry; (2) the clergy; (3) urban inhabitants or burghers; and (4) rural inhabitants, or the peasantry. The burghers, again, were subdivided into four groups. Although the law referred to the above classes as "estates" (*soslovie*) this description in a number of cases was nothing but an anachronism. Membership in some of the "estates" was no longer hereditary and such "estates" had themselves no corporate organization (for example, the clergy and certain subdivisions of the burghers group). The rights and duties of the corporate organizations of the

"estates," with the exception of those of the nobles and of the peasants, were of little practical significance. The Decree of October 5, 1906, was an important landmark on the road toward legal equality. It extended to all the subjects of the Russian Crown (with the exception of nomadic tribes such as the Samoyeds, Kalmiks, etc., and the Jews) two important rights formerly enjoyed only by the nobles and the upper group of the burghers: the right to choose their place of residence and to move freely about the country, and the right to enter government service.

The Nobility. Political and social influence and much of the wealth of the country was in the hands of the nobility. Yet the Russian *dvorianstvo* had a number of characteristics not usually associated with an aristocracy. To begin with, there were two kinds of *dvorianstvo*—hereditary and personal. The latter was not transferable to the children of a "personal noble"—a term as awkward as the notion for which it stands. Nobility was acquired by descent from a noble father, and also, under certain conditions, through government service. After the days of Peter I (1722) all civil servants were divided into fourteen classes—*chin*—arranged in a hierarchical order.[1] Membership in these classes was in the nature of an honorary title and had no direct connection with the office held. Every civil servant that reached class nine became a "personal noble," while class four brought with it hereditary nobility. Promotion from class to class was automatic according to the length of service. "Personal nobility" went also with every decoration, while until 1900 hereditary nobility was conferred upon the recipient of the order of St. Vladimir, fourth class, a decoration given to every civil servant after thirty-five years of service. In 1900 this rule was changed and hereditary nobility was conferred only on the recipients of the higher decorations. Similar regulations applying to the officers in the army and navy were even more liberal. Government service thus became the most usual method of filling the ranks of the nobility since honorary titles (*chin*) and decorations were a part of the bureaucratic routine. Even before the Decree of October 5, 1906, admittance into government service was open to all university graduates irrespective of their social origin. It will thus appear that the Russian *dvorianstvo* can hardly be described as an aristocracy. It comprised a number of families of ancient lineage, some of them titled, but also many "hereditary nobles," as well

[1] In 1834 classes eleven and thirteen were abolished.

as the "personal nobles," who were people of humble origin and modest standing. From the point of view of their social and economic status the majority of the *dvoriane* were much nearer to what is usually known as the middle and the lower middle class than they were to the aristocracy. The corporate institutions of the nobility will be briefly discussed in connection with local government, but it may be noted here that they were organized on a purely provincial basis and that there was no official national organ through which the voice of the highest "estate" in the realm could be heard.

Social Leveling. The legal status of the other "estates" presents little of practical interest, especially since the legislation of the beginning of the twentieth century removed many of the disabilities that were the fate of the unprivileged groups in the past. In the case of the peasants, however, the process of emancipation continued to be particularly painful and slow.

The Jews

Legal Disabilities of the Jews. The position of the Jews deserves special attention. The Jews, as a rule, were not permitted to reside outside a specified area which comprised the provinces of western and southwestern Russia. This restriction, however, did not apply to the following categories of Jews: (1) well-to-do merchants who belonged to the first of the two guilds into which all the merchant class was divided; (2) university graduates and holders of higher degrees; (3) dentists, druggists, junior medical officers and midwives; (4) university students and those studying for the professions listed under section three. The Jews were prohibited (after 1882) from acquiring or leasing land in rural districts, even in the provinces where they were permitted to reside. Government service was open to only those Jews who had graduated from the universities with high honors or to the holders of higher degrees. The admittance of Jewish students to schools and universities was limited by a quota. A curious provision of the law specifically forbade Jewish women to shave their heads. All these restrictions naturally invited abuse and offered almost unlimited opportunities for graft which the police officers seldom overlooked. In sharp contrast with recent German and Italian legislation Russian legal discrimination against the Jews was based on religious and not on racial grounds. The restrictions just mentioned applied only to Rabbinical Jews and did not affect the Karaites. The acceptance by a Jew of

membership in a Christian church automatically removed all disabilities.

Local Government

Administrative Territorial Subdivisions. For the purposes of general administration the territory of the Empire was divided into seventy provinces (*gubernia*) and several regions (*oblast, okrug*) the latter denomination being applied to some of the border territories. The division into provinces goes back to 1710, but the actual scheme of administrative subdivision still largely in force on the eve of the Revolution was introduced in 1781. This scheme was an arbitrary one and had but the slightest connection with the historical territorial units that were gradually absorbed by the Russian State. The provinces were subdivided into counties (*uezd*) whose number per province varied from four to fifteen. It was originally intended that a county should comprise a population of some twenty to thirty thousands. In addition to the basic division into provinces and counties, there were ten more divisions for specific purposes, such as the army, the administration of justice, transportation, the church, post, and telegraph. The territorial units comprised in the special subdivisions were usually much larger than a province, although this was not always true of the dioceses.

Dual Nature of Local Administration. Provincial government was administered by two sets of officials: those appointed by the Crown and those deriving their powers from local self-government. By and large, the former dealt chiefly with police and fiscal matters, that is, they represented primarily the interests of the State, while self-government institutions concerned themselves with schools, public health, roads, relief, anti-fire measures, the advancement of agriculture, commerce and industry, that is, with what may be described as social and economic policies.

The Governor. The chief representative of the Crown in the provinces was the governor, who was appointed by the Emperor on the nomination, in theory, of the Council of Ministers, but in practice, of the Minister of the Interior. The governor was originally (1764) designed to be the actual head of the province and the co-ordinating organ of the provincial administration. Gradually he lost this function and became more and more an official of the Ministry of the Interior concerned chiefly with matters within the jurisdiction of that department. The governor, however, retained wide powers of control and supervision, espe-

cially over the personnel of the provincial administration. He appointed the provincial officers of the institutions under the Ministry of the Interior and he confirmed the election of a number of officers chosen by the institutions of local government. He had discretionary powers over the appointments made by the *zemstvos* and the municipalities to offices that were not filled by election. It was his duty to ascertain that administrative officers were "desirable" from the standpoint of their political views. The governor had extensive police powers although the political police *(gendarmes)* remained outside his jurisdiction. These police powers were as broad as they were ill-defined and in the hands of a zealous and ambitious administrator could and did actually become in many instances the instruments of a capricious and arbitrary rule.

The Governor-General. In Moscow and some of the border regions there also existed the office of governor-general. The powers of this high official, who was a personal appointee of the Emperor, were determined by an archaic instruction of 1853 which was never revised and brought in line with subsequent legislation. The position of the governor-general was that of an intermediate organ between the central and the provincial government. His chief functions were those of political control and political supervision over the local administration within his jurisdiction. His powers were extremely broad and, although most of them were never exercised, they offered practically unlimited opportunities for drastic interference with local administration and private interests.

Agencies of Crown Administration. It was the original intention of the law that the governor should normally exercise his functions not directly but through some special administrative organ thus providing a certain guarantee against arbitrary policies. Practice, however, differed from theory. The central organ of provincial administration, the Provincial Office (*Gubernskoe Pravlenie*), degenerated into the governor's chancery which obediently took his orders. The Financial Board (*Kazennaia Palata*), which dealt with bookkeeping and the collection of taxes, enjoyed a somewhat greater independence. The Provincial Excise Administration (*Gubernskoe Aktsiznoe Upravlenie*) was in charge of the State Liquor Monopoly. The Control Board (*Kontrolnaia Palata*) exercised the functions of financial control, and unlike the other institutions just mentioned, was not subject to the jurisdiction of the governor. There was also a special administra-

tion which managed State properties. All these organs were purely bureaucratic in their composition.

Provincial Self-Government. The law provided that provincial government should comprise, side by side with purely administrative organs, also the institutions of local self-government, the provincial *zemstvo*. The new *zemstvo* institutions were created by the Law of 1864, which was amended in 1890. The latter legislation increased the dependence of the *zemstvo* on the officers of the Crown and changed the franchise in such a manner as to give a definite preponderance to the landed nobility. In addition to the functions already mentioned the *zemstvo* had certain duties in connection with the fiscal administration, for instance the assessment of taxes. The organs of the provincial *zemstvo* were the *zemstvo* assembly (*zemskoe sobranie*) and the *zemstvo* board (*zemskaia uprava*). The membership of the provincial *zemstvo* assembly consisted of two categories: (1) delegates elected for three years by the county (*uezd*) *zemstvo* assemblies from among their own number; and (2) members *ex officio* (county marshals of the nobility, a representative of the clergy, the chairman and members of the Provincial Office, the chairman and members of the county *zemstvo* boards). The provincial marshal of the nobility was by virtue of his office chairman of the provincial *zemstvo* assembly which met once a year. The executive organ of the assembly, the provincial *zemstvo* board, was elected by the provincial *zemstvo* assembly and consisted of a chairman and two members. The decisions of the provincial *zemstvo* assembly could be suspended by the governor or by the Minister of the Interior on the ground that they were either illegal or contrary to public policy. In the latter case the governor had the power to substitute his own decision for that of the assembly.

Corporations of the Nobility. The nobility (*dvorianstvo*) took an active part in the provincial government. In thirty-nine provinces of European Russia the nobility formed corporations which had their own organ, the provincial assembly of the nobility. The assembly met every three years and all the hereditary nobles of the province (but not the "personal nobles") were eligible to attend, although only those who possessed specified property and educational qualifications were entitled to vote. The most important function of the assembly was the election of the provincial and county marshals of the nobility. Other elected officers had no political significance. The assembly, as a

whole, chose two candidates for the office of the provincial marshal of the nobility. The names of the nominees were submitted to the Emperor who made the final selection. The members of the assembly for each county severally elected their respective county marshals of the nobility who were confirmed in office by the governor. The provincial marshal of the nobility was a very important figure in the provincial government and was *ex officio* a member of the various boards appointed to deal with judicial and administrative problems. The assembly also held the discretionary power of excluding undeserving members from the ranks of the nobility of the province, thus effectively preventing political opponents from being eligible for membership in the institutions of local self-government or in the State Duma. After 1906 the provincial assemblies of the nobility chose delegates who gathered in St. Petersburg and elected from their own number eighteen members of the State Council.

County Government. Although the subdivision of the provinces into counties goes back to the eighteenth century no definite county administration existed until the second half of the nineteenth. Even during the latter period such administration was haphazard and casual in its composition. The central figure of the county government was the county marshal of the nobility. He was invariably the chairman of the various boards, which consisted of local officials such as the chief of the police, the tax inspector, and others. The second branch of the county government was the county *zemstvo* which consisted of the county *zemstvo* assembly and the county *zemstvo* board. The assembly was composed of elected delegates and local officials, who were its members *ex officio*. The *zemstvo* franchise was based on property and personal qualifications (age, citizenship, length of residence). The electorate was divided into three groups each choosing a specified number of delegates. These groups were the nobles (both "hereditary" and "personal"), the peasants, and all others. Under the law the nobles, who formed only a small proportion of the electorate, were entitled to a much larger representation than were the other two groups. The county marshal of the nobility was *ex officio* chairman of the county *zemstvo* assembly. The assembly was elected for three years and met once a year. Its decisions, like those of the provincial *zemstvo* assembly, were subject to the approval of the governor.

Township Government. At the base of the administrative pyramid were the townships (*volost*) which comprised one or

more village communities (*selskoe obshchestvo*). The townships and the village communities had their assemblies of householders and their elected officers who, however, represented only one social class—the peasantry. The township officials, who had the unenviable duty of enforcing the performance by the peasants of their obligations toward the State, were themselves, like the entire peasant population, under the strict and vigilant control of the administrative officers of whom the most dreaded was the *zemski machalnik,* an appointed official armed with broad administrative and judicial powers. In spite of its elective character the township administration was hardly an organ of peasant self-government. It was more in the nature of an instrument for the performance of an onerous duty.

Municipal Government. A word must be added about municipal self-government which was established by the Law of 1870 and revised by the Law of 1892. The latter legislation extended the powers of the governor over municipal institutions. The municipal government consisted of the municipal assembly (*gorodskaia duma*) and its executive, the municipal board (*gorodskaia uprava*). The municipal franchise was restricted and based on property qualifications. The functions of the municipalities and their relations with the governor were similar to those of the *zemstvo.*

An Appraisal. It is truly remarkable that in spite of the flagrant imperfections of their legal structure and the limited means at their disposal the institutions of local self-government succeeded in achieving as much as they did. The *zemstvo* particularly distinguished itself by building up an extensive network of schools, hospitals, charitable institutions, experimental farms, and so on. The success of this work was due in no small degree to the fact that the *zemstvo*—strange as this may appear—was traditionally considered as the stronghold of liberalism and the leader in social reform. Its reputation attracted to its banners a large number of men and women eager to contribute to the enlightenment of the masses. Not a few of the *zemstvo* employees—teachers, doctors, nurses, agricultural experts, engineers—were strongly tinged with radicalism, a dangerous thing in Imperial Russia. The reputedly revolutionary character of the *zemstvo* staff added to the frictions between the institutions of local self-government and the administration, frictions that were inherent in the very structure of Russia's local government.

The Regime in Action

Constitutional Dualism. The antagonism that existed between the Crown officers and the institutions of local self-government permeated the entire political and social life of the country. The regime established by the legislation of 1905-1906 was highly imperfect and introduced a kind of constitutional dualism by limiting the legislative powers of the Crown while leaving the executive powers intact in the hands of the Emperor. A legislative assembly that had no control over the executive and no effective control over the budget was merely the shadow of a real parliament. But even these modest concessions were wrested from Nicholas II only in a moment of weakness when his throne seemed ready to topple over under the furious onslaught of the revolutionary storm of 1905. The Tsar never became reconciled to the curtailment of his powers and resented such limitation as a bitter humiliation. At the end of 1913 he made a definite attempt to revise the Fundamental Laws of 1906 and to reduce the State Duma and the State Council to the position of purely advisory bodies, a status which, in his opinion, was "in accordance with the Russian tradition." Although this attempt was abandoned in its initial stage it helps to explain the liberties taken by the Government with the constitutional prerogatives of the legislature, the abuse of Article 87, and the flagrant violation of the law in the revision of the franchise by the Act of June 3, 1907. Refusing to avail itself of the guidance of public opinion, which was naturally and rightly suspicious, the Government relied on measures of coercion and police supervision.

P. A. Stolypin. P. A. Stolypin, President of the Council of Ministers in 1906-1911, succeeded in bringing about domestic "appeasement," not so much by the wisdom of his policies as by putting most of the country under a "state of emergency" regime in which civic liberties were suspended and administrative officers received wide quasi-judicial powers. Courts-martial were busy and a great many people were deported to remote parts of the country without even a trial. The Police Department was like a huge spider web. It had agents everywhere and succeeded in having one of them elected to the State Duma where he served with distinction as the leader of the Social Democratic Party. Stolypin himself perished at the hand of one of his own *agents provocateurs* who murdered him at a gala performance in the opera house in Kiev.

The Four State Dumas. The boisterous activities of the First and Second Dumas proved their undoing and brought about the restrictive franchise of the Law of June 3, 1907. The Third and the Fourth Dumas were meek, conservative, and docile. Only during the Great War, appalled by the decay of the Government and sensing the rapidly approaching doom of the regime, did the Duma rise for a few brief months to a position of national leadership. Party life under these conditions was colorless and relatively unimportant. The First Duma was largely dominated by the Constitutional-Democratic Party which united the best elements of Russian liberalism. Its success was partly due to the boycott of the election by the Socialists. Their policies were revised during the election to the Second Duma with the result that the Social Democratic Party (which included both the Bolsheviks and the Mensheviks) elected 67 deputies and the Labor Group, which also had revolutionary tendencies, 120. The electoral Law of June 3, 1907, produced the Third Duma, which had only 14 Social Democrats, 14 members of the Labor Group, and 53 deputies belonging to the Constitutional Democratic Party. The vast majority of the chamber consisted of conservatives of various hues. The Fourth Duma was just as reactionary.[1]

Conflict between the Government and Liberal Opinion. The government's hostile attitude toward the Duma and toward the institutions of local self-government was even more in evidence in its relations with the labor organizations. The few trade unions that managed to gain a foothold in the short-lived liberal era of 1905 were soon wiped out of existence by governors exercising their "emergency powers." The Minister of the Interior, admitting in 1915 that abuses in this direction were frequent, explained them by the fact that "the generals and governors prefer to close down the organizations they dislike rather than to look after them and be responsible for them."

The Bureaucracy. The real backbone of the regime was the bureaucracy, which had built up a fairly high tradition of public service and in its higher levels was reasonably honest. A bureaucracy, however, is always slow, unadaptable, and often arrogant. It finds it difficult to meet pressing emergencies and hates to face problems, however urgent, which disturb its complacency and the inflexible routine of its stuffy offices.

The Land Reform of 1906-1910 and Compulsory Primary Education. With all its weaknesses, the political regime of Im-

[1] See below, p. 799, n. 1.

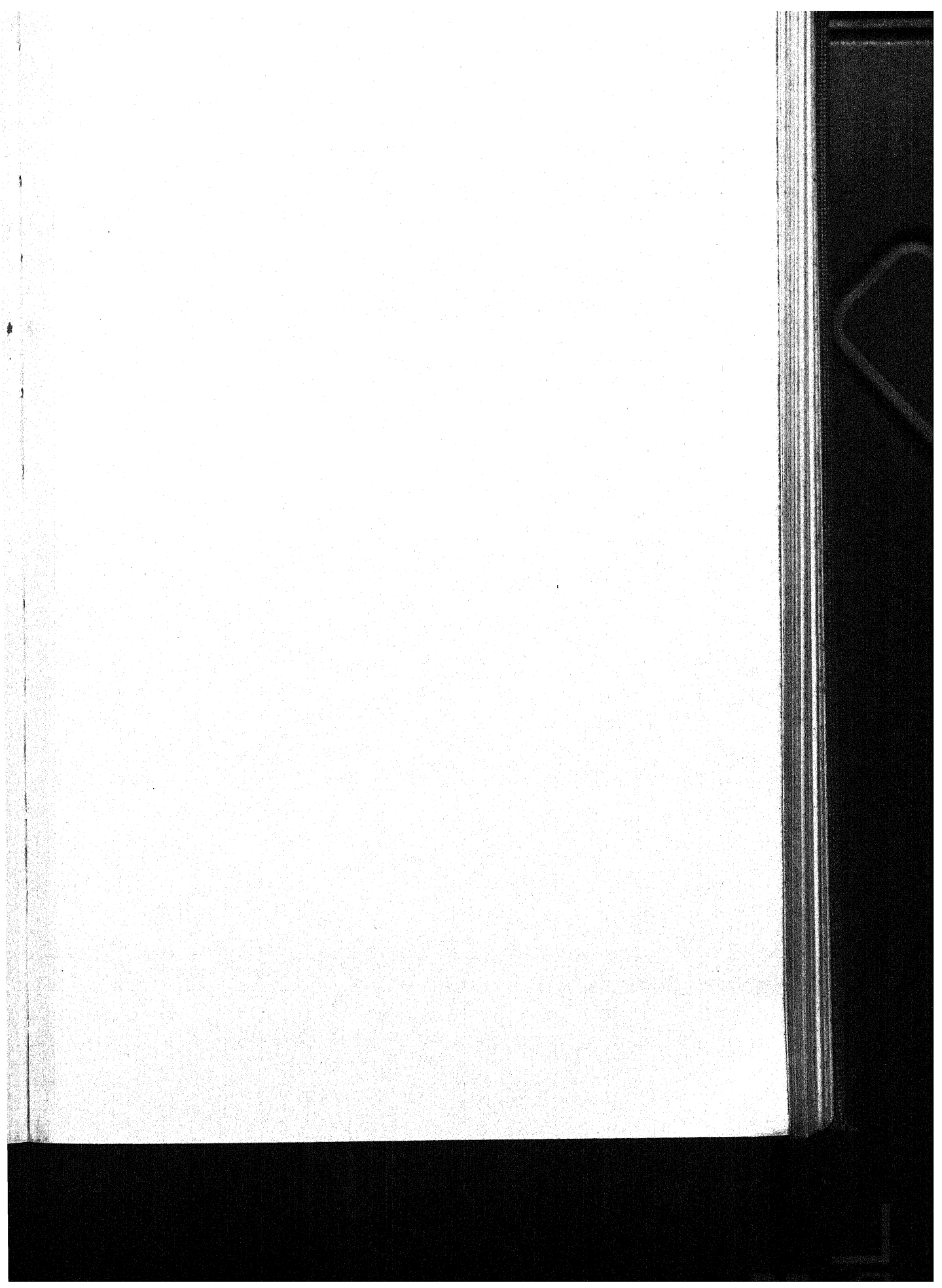
perial Russia should be given credit for two important reforms that were introduced shortly before the War. One of them was the land reform of Stolypin, which made a by no means unsuccessful attempt to remove the many legal and economic disabilities from which the peasants had been suffering since the days of the Emancipation of 1861. The legislation of 1906-1910 had for its purpose the freeing of the peasants from their former dependence on the antiquated communal land tenure (*mir*) and establishing them as independent farmers. The reform was severely criticised, and with some justification, on the ground that it favored the well-to-do peasants at the expense of their less fortunate neighbors. The completion of the reform was prevented by the outbreak of the War. The second important and welcome departure from past policies was the Law of May 3, 1908, which provided for the gradual introduction of compulsory primary education for all children. The plan, if carried out according to schedule, was to be completed by 1922.

Inherent Contradictions of the Regime. The many inherent contradictions and latent antagonisms that were working for the disruption of the social and political texture of the Russian Empire were aggravated, on the one hand, by extreme religious and racial intolerance displayed by both the Church and the government, and, on the other, by the deep cleavage between the thin layer of the educated classes and the masses of the largely illiterate peasantry. The extreme poverty in which the majority of the people lived, coupled with the inability of many of them even to read, effectively excluded the masses from participation in the cultural life of the country. The great leveling influence of a popular daily press was absent. Organized sports such as prize fighting or baseball, which in the United States have a general appeal irrespective of a man's social or financial position, were utterly non-existent. The complete divorce between the educated groups and the masses was a fundamental weakness of Russia's social structure, a weakness that prevented the country from finding a common language at the time of the great emergency.

CHAPTER II. THE WAR AND THE PROVISIONAL GOVERNMENT

The Decay of the Government

Illusions of the Early Days of the War. Until the outbreak of the War of 1914-1918 the many weaknesses of Russia's political and social structure were more or less successfully hidden behind the majestic façade of imperial pomp and circumstance. The boundless expanse of the country and its seemingly inexhaustible natural resources and reserves of man power suggested almost invincible strength. The defeat of Russia at the hands of the Japanese in 1904-1905 no doubt augured ill, but it could be explained away on the ground that the Russo-Japanese War was fought in a distant province, connected with the center of the Empire by three thousand miles of a single-track railway and that, moreover, the Far Eastern venture never ranked as a national enterprise. The war against Germany, Austria-Hungary, and their allies was in a different class and seemed to appeal to the imagination of the nation. The response to the mobilization order was most encouraging, indeed enthusiastic. Even the liberals and not a few of the radicals rallied to the support of the Government not only because it was widely believed that the Central Powers had perpetrated an abominable outrage on little Serbia and, later, on Belgium, but also because Russia's participation in the struggle on the side of the great Western democracies—England and France—was interpreted as a promising sign for the future. The extravagant hopes fixed by many Allied statesmen and authors on the irresistible efficiency of the Russian "steam-roller" proved as ill founded and deceptive as were the illusions of the Russian liberals about the approaching era of democracy. National resources are of little assistance unless they are properly exploited and transported where they are really needed, and man power that is inadequately trained, ill equipped and without experi-



THE RUSSIAN EMPIRE in 1914

Territory lost after the World War

0 500 1000 Scale of Miles

NORWAY
SWEDEN
GERMANY
Christiania
Hamburg
Berlin
Copenhagen
Memel
Stockholm
Gothenburg
Malmö
Torneå
Kola
Arctic circle
FINLAND
Helsingfors
Reval
ESTONIA
LIVONIA
LITH.
LATVIA
Riga
Kovno
Vilna
Warsaw
POLAND
Cracow
St. Petersburg
Pskov
Novgorod
Archangelsk
Vitebsk
Minsk
Smolensk
MOSCOW
Vologda
Kiev
Dnieper
Orel
Tula
Kursk
Poltava
Kharkov
Kishinev
Odessa
Sevastopol
Taganrog
Don
Rostov
Ekaterinoslav
Saratov
Volga
Samara
Kazan
Viatka
Perm
Ekaterinburg
Ufa
Orenburg
Chelyabinsk
Ural R.
Uralsk
Astrakhan
Baku
Kars
Tiflis
Erivan
CASPIAN SEA
CAUCASIAN MTS.
Tabriz
Teheran
PERSIA
Krasnovodsk
Sea of Aral
Khiva
KHIVA
Amur Darya
Bukhara
BUKHARA
Merv
Tashkent
Samarkand
Andizhan
Verni
Urumchi
Yarkand
Kabul
Khyber Pass
Peshawar
AFGHANISTAN
INDIA
CHINESE EMPIRE
SINKIANG
MONGOLIA
Urga
Peking
Tientsin
Dairen (Japan)
Port Arthur
Weihaiwei (Br.)
Tsingtao (German)
Seoul
KOREA
Mukden
Vladivostok
Tokyo
Kobe
Osaka
JAPAN
Irkutsk
Lake Baikal
TRANS BAIKAL
Chita
Manchuria
Tsitsihar
Harbin
CHINESE EASTERN RY.
MANCHURIA
Blagoveshchensk
Khabarovsk
Amur R.
Tomsk
Krasnoiarsk
Omsk
Irtysh
Akmolinsk
Semipalatinsk
SEMIPALATINSK
L. Balkhash
TURKESTAN
AKMOLINSK
TURGAI
URALSK
TRANS SIBERIAN RAILWAY
Tobolsk
Tobol
Ob
Yenisei
YENISEISK
IRKUTSK
Lena
Yakutsk
Kolyma
Okhotsk
Petropavlovsk
KAMCHATKA
Nikolaev
SAKHALIN
Alexandrovsk
KARAFUTO
Wrangel I.
ALASKA (U.S.)
NICOLAS II LAND
NOVAIA ZEMLIA
NEW SIBERIAN IS.
ARCTIC OCEAN
Tundra
YAKUTSK
EASTERN SIBERIA
PROVINCE
Raisz.

enced leaders is merely cannon fodder for a better prepared enemy, even though the latter be numerically inferior. The cooperation between the Government and the liberal elements so ardently hoped for by many Russians had once more failed to materialize, and with the progress of the War the entire governmental machinery rapidly disintegrated.

Elements which Contributed to the Downfall of the Government. This process was accelerated by certain external developments. The mobilization of 1914 followed by the calling of new classes, which increased the size of the army and the reserve to over fifteen million men (1917), not only created a shortage of labor but brought with it the bewildering problem of equipping and provisioning this huge military force. The blockade of the Baltic Sea and the closing of the western land frontier and the Dardanelles very nearly isolated Russia from the rest of the world, the only remaining routes being via the White Sea, the Pacific Ocean, or the Scandinavian countries. The railroads, which had already proved inadequate to meet the requirements of the growing pre-war traffic, were unable to cope with the new and heavy burden imposed upon them by the needs of the army. The financial difficulties of the Treasury, inherent in wartime conditions, were aggravated by an ill-advised venture into prohibition, the Government suspending the operation of the State Monopoly of Liquor which provided more than a quarter of the State revenue. The effects of this measure were exactly like those of the Eighteenth Amendment in this country: drunkenness continued and the illicit sale of liquor flourished at the expense of both legitimate business and the State Treasury. Military reverses not only cooled the enthusiasm of the first days of the War but also brought in their wake hundreds of thousands of refugees, some of whom were forcibly evacuated by the Russian command while others had fled from the advancing enemy.

Inadequacy of Leadership. To deal adequately with these and many other war problems would have required all the energies of the nation under a firm and enlightened leadership. This the Imperial Government proved incapable of providing. It had definitely entered on a process of inner disintegration that culminated in the overthrow of the monarchy.

The Emperor and the Empress

Role of the Tsar before the War. The process of disintegration was probably nowhere more pronounced than at the very

fountain of power, the Imperial throne. Although under the constitutional arrangements the Emperor enjoyed practically unlimited control over the executive branch of the government, the influence of Nicholas II was little felt in public affairs before the outbreak of the War. The Emperor was to a large extent merely the nominal head of the Government which was conducted in his name by the bureaucracy. Even the prerogative of appointing the Ministers of the Crown was in practice less important than one might imagine, since they were usually chosen from among the men qualified for the office by their previous experience and their position in the bureaucratic hierarchy. During the War this practice came to an abrupt end.

The Question of High Command. Nicholas II was a man of weak and obstinate character and mediocre ability. A devout son of the Russian Church and a firm believer in the mystical tradition of Muscovite absolutism, he considered it his duty to lead in person the Russian army of which he was the titular head. Nevertheless at the outbreak of the War he appointed the Grand Duke Nicholas Nikolaevich Commander-in-Chief. The Grand Duke knew little about the science of warfare but he was tall and handsome and displayed at times toward the senior officers the same kind of ruthless brutality that was only too frequently the fate of the common soldier. This was probably the source of his unquestionable popularity with the rank and file of the army, a popularity that was particularly resented by the Tsar's ambitious and restless consort, the Empress Alexandra Fedorovna. A German by birth, the Tsarina was brought up in London at the court of her grandmother, Queen Victoria, and even more than Nicholas II was devoted to the principles of Russian autocracy. A neurotic and unbalanced woman, she was entirely under the influence of the well-known adventurer, Gregory Rasputin, an uneducated, coarse, and licentious peasant. To the Empress, however, he was the "man of God" and "our friend" sent by Providence itself to watch over the autocrat of all the Russias, and the heir to the throne, the sickly boy Alexis. The Empress, instigated by Rasputin, who had a personal grudge against the Grand Duke Nicholas Nikolaevich, used all her influence with the Tsar to persuade him to assume himself the command of the army. At the end of August, 1915, the Grand Duke was sent to the Caucasus and the Tsar became Commander-in-Chief. The Empress greeted his decision as "a glorious page in your reign and in Russian History."

The Empress at the Helm. The departure of the Emperor for the army headquarters left the Government in Petrograd [1] without a head. With the full approval of her husband the Empress assumed a most active part in the conduct of public affairs with Rasputin as her spiritual guide and trusted adviser. Rasputin's association with the Imperial family had been a scandal even before the War but not until 1915 did the "man of God" become an important factor in national affairs. In 1916 Rasputin was practically the undisputed master of the country, a situation that would have been utterly incredible had it not been established beyond doubt by the letters of the Emperor and the Empress themselves, letters which have since been published. No appointment to any high office could take place without Rasputin's approval. The effect of this state of affairs upon the Government and upon the prestige of the Imperial regime was naturally disastrous. The innumerable warnings of the impending catastrophe that came to Nicholas II from all sides met with rebuke and reprisals. In December, 1916, Rasputin was murdered at the house of Prince Yusupov by a conservative member of the State Duma, Purishkevich, with the Grand Duke Dimitry Pavlovich taking an active part in the plot. The destruction of the evil genius of the dynasty was received with a general feeling of relief, but it failed to clear the political atmosphere, and a few weeks later the regime of which Rasputin had become the symbol was swept away by the Revolution.

The Breakdown of the Bureaucratic System

Weakening of the Central Government. The bureaucratic machine, that mainstay of Imperial Russia, suffered during the war one blow after another until it fell into a state of complete collapse. Its traditional position of unchallengeable supremacy was undermined by attacks from three sides: the military command, the Crown, and progressive opinion expressed through the State Duma and various war-time organizations.

Ascendancy of the Military. A "Law on the Administration of the Army in Time of War," hastily passed in July, 1914, on the eve of the mobilization, drastically curtailed the powers of the civilian authorities within a wide "military zone" comprising the "army in the field" and adjoining territories. With the retreat of the Russian troops in 1915 the "military zone" was extended

[1] The name of the capital was changed from St. Petersburg to Petrograd at the beginning of the War.

to a large portion of the Empire, including the city of Petrograd. Within this zone the officers of the civilian administration were to take their orders from the military command which was given power to dismiss civil servants as well as officials employed by the institutions of self-government. The Law made no reference to the Council of Ministers and its President and the relations between these organs and the military authorities were not clearly defined. The result was that the army headquarters displayed utter disregard for the civilian administration, from the Council of Ministers down. According to a statement made in August, 1915, by the Minister of the Interior, Prince N. B. Shcherbatov, "even in Petrograd . . . the Minister of the Interior is a mere 'man in the street' who is permitted to act only so far as this does not interfere with the fanciful orders of the military authorities." And he added that the provinces adjoining the front "present a revolting picture of anarchy, lawlessness, and paralysis of power," conditions which he rightly ascribed to the erratic display of energy by the uniformed "hordes of heroes of the rear."

The Tsar's Displeasure and the Rule of Rasputin. Like the military leaders, the monarch himself turned against his official advisers. It will be recalled that the confidence of the sovereign was the very source from which the Council of Ministers derived its authority. It soon appeared, however, that the Emperor did not trust the Ministers he had appointed. At the outbreak of the war the Council of Ministers was headed by the senile I. L. Goremykin, a man of seventy-five, reactionary to the bone and one of the worst products of the Russian bureaucracy. Changes in the composition of the Government in the early part of 1915 resulted in the formation of a Cabinet which, for a Russian Imperial Government, contained an unusually large number of men who were able, liberal-minded, and eager to co-operate with the State Duma and the newly-created war-time organizations. Most of these Ministers were naturally at odds with the President of the Council, who was a friend of Rasputin and who firmly believed in his own words, that "the will of the Tsar must be obeyed like the Gospel." The decision of the Tsar to assume in person the command of the army was reached without consulting the Council of Ministers and was received by the members of this body with consternation. Over the objections of Goremykin the majority of the Ministers jointly urged the Emperor to reconsider his decision which they felt would prove fatal to the regime. This unprecedented *démarche* had no practical consequences but

it "shocked and horrified" the Emperor and his consort. Events proved that the apprehensions of the Ministers had been only too well justified. The departure of the Tsar for the army headquarters opened an era of personal rule by the Empress and Rasputin. In spite of the Ministers' emphatic declaration that the dissensions prevailing in their midst were intolerable and would be fatal to the welfare of the country, a statement amounting to a collective resignation, their plea had no immediate consequence. However, gradually and one by one those members of the Government who had the temerity to speak frankly to their sovereign were dropped and were replaced by men chosen by the Empress and Rasputin. Changes became very frequent as some of the newcomers succeeded in maintaining themselves in office for only a few weeks. Rasputin's blessing was in many instances the only qualification for office. Purishkevich, the arch-conservative member of the State Duma who murdered Rasputin, aptly described this sinister procession of nonentities and adventurers as the "ministerial leap-frog." The appointment of new Ministers was accompanied by the reshuffling of their subordinates, the whole of the bureaucratic pyramid losing its traditional stability.

Awakening of Public Opinion. The gradual awakening of public opinion to the fact that Russia's military reverses were due to its unpreparedness and to the inability of the authorities to organize the country for the conduct of the War, brought forth a strong movement for the creation of a "government enjoying the confidence of the nation." In spite of the Tsar's profound dislike of any manifestation of public opinion he was forced to bow to the criticisms directed against Goremykin, who was dismissed in January, 1916. The succeeding President of the Council of Ministers was Boris Sturmer, a septuagenarian and a bureaucrat of a type even more objectionable than his predecessor. The attacks on him became so violent that he was forced to resign in November, 1916. Sturmer was followed by A. F. Trepov, who lasted for barely five weeks. Then came Prince N. D. Golitsin, the last President of the Council of Ministers of Imperial Russia. He had neither political experience nor political ambition and accepted the burden of office only because he was ordered to do so by the Emperor. The helm of the Russian ship of State was in the unsteady hands of this elderly courtier when the revolutionary storm broke.

A "Government Hanging in the Air." S. D. Sazonov, Minister of Foreign Affairs, described accurately the position of the

Council of Ministers when he said in the summer of 1915 that the "government was hanging in the air." Its authority was openly challenged by the army commanders, it was treated in the most unceremonious fashion by the monarch from whom it derived its powers, and it was rejected as utterly unrepresentative and inadequate by progressive opinion, which demanded a "government enjoying public confidence."

The Rise of the Duma

Patriotic Attitude of the State Duma. The State Duma gradually became the center of organized opposition. Convoked for a brief one-day session immediately after the declaration of war it solemnly proclaimed its desire to co-operate with the Government in the conduct of the war to a victorious end. The only dissenting voice came from the Social-Democratic Party represented by fourteen deputies. After voting military appropriations (the Social-Democrats withdrew without taking part in the balloting) the Duma adjourned until January, 1915. The brevity of parliamentary sessions during the war and the general nature of wartime conditions tended to curtail still further the already limited powers of the legislature. Under the Russian law the bulk of war expenditure was entirely beyond the jurisdiction of the Duma and the State Council. Legislation under Article 87 [1] received wide application. No less than 384 measures were made law by virtue of this article during the premiership of Goremykin (January 30, 1914-January 20, 1916). Yet the prestige of the Duma continued to increase. After adjournment in the summer of 1914 the members of the lower chamber residing in the capital constituted themselves a provisional committee for the relief of war sufferers. The committee met regularly and in addition to carrying on its humanitarian work became a kind of unofficial political center which closely watched the development of the political situation. Russia's shocking unpreparedness for war and the disastrous reverses suffered by the army were naturally the focal point of discussion. Official optimism voiced early in 1915 by the spokesmen of the Government—Goremykin and General Sukhomlinov, Minister of War, who was soon to be tried for high treason—were hopelessly at variance with information that reached the Duma from every side. Nevertheless the three-day session of the legislature in January, 1915, stood firmly by the principle of "safeguarding the moral unity of the country as the

[1] See above, pp. 771-772.

best guarantee of victory." But behind this serene façade there began the struggle for the convocation of a business session of the Duma so that it could take an active part in the conduct of the War. The Government made some concessions by replacing four Ministers, among them Sukhomlinov, by men more acceptable to public opinion, but showed no desire to meet the other wishes of the Duma.

The Progressive Bloc. In the summer of 1915 there came into existence a parliamentary combination, the Progressive Bloc, which comprised about two-thirds of the members of the Duma, the deputies from both the extreme Left and the extreme Right refraining from participation.[1] A group of the more liberal-minded members of the State Council led by the former Prime Minister, Count V. N. Kokovtstov, joined the Progressive Bloc. The program of this parliamentary group was extremely modest. The principal demand was for a "government enjoying the confidence of the nation," a vague formula which did not mean a cabinet responsible to parliament but merely one consisting of men whom public opinion would trust. There was nothing revolutionary about the other demands: greater tolerance toward national minorities, especially the Poles and the Jews whom the military command treated with extreme harshness; religious and political amnesty, including the liberation of all persons who had been deported without a trial; real freedom for the trade unions and other labor organizations. A number of Ministers favored the program and even took a hand in organizing the Progressive Bloc, but Goremykin believed that a combination comprising members of the two chambers was illegal and that the demands of the Bloc were outrageous. The Emperor and the Empress shared his view.

Criticism of the Government in the State Duma. The session of the Duma in the late summer of 1915 proved stormy. The program of "national unity" was submitted to a severe test and after six eventful weeks the Duma was suddenly prorogued. The breach between the legislature and the Government was now complete and was further widened by the ministerial changes that followed the departure of the Tsar for the army Headquarters. Sturmer, the new President of the Council of Ministers,

[1] The Fourth Duma had 422 members who may be divided into four groups: (1) Conservatives: Right, 65 deputies; Nationalists, 125; "Octobrists," 98; (2) Liberals: Progressivists, 48; Constitutional-Democrats, 59; (3) Radicals: Labor Group (led by Kerensky), 10; Social-Democrats, 14; (4) National minorities—Poles, White Russians, Moslems—21. Seven deputies had no party allegiance.

attempted to exact from the leaders of the Duma a promise that the name of Rasputin would not be mentioned in the debates, for the grotesque and sinister figure of the illiterate *muzhik* (peasant) overshadowed the political scene and dwarfed all other issues, including that of the War. Although the assurance was not given, the Duma was convoked in February, 1916, and for the first time in its history was visited by the Tsar, who received an enthusiastic reception. The visit had been inspired by Rasputin and the Empress, who seem to have been motivated by a mystical belief in the irresistible fascination emanating from the Tsar's person. The charm failed to work and after the first emotional outbreak had died away the Duma proved more hostile and less manageable than ever. The situation reached a climax in November, 1916, when Professor P. N. Miliukov, leader of the Constitutional-Democratic Party, delivered a speech in which he discussed the dark forces behind the throne and insinuated that not only the Prime Minister, Sturmer, but also the Empress was guilty of collusion with the enemy. Miliukov ended each paragraph of his attack on the failings of the Imperial regime with the question: "Is this stupidity or treason?" His own answer to the question was not clear and opinion in the country was divided. Miliukov's speech and others in the same vein, some of them delivered by conservative deputies, had immense repercussions throughout the country. Strict censorship and the appearance of newspapers with a blank space where columns containing parliamentary reports and editorials usually appeared only excited general curiosity. The prohibited speeches were circulated in millions of mimeographed copies and were avidly read everywhere, even in the trenches and in the peasant cottages. It has been established since that Miliukov's charges, so far as they concerned treasonable relations of the Empress and Sturmer with Germany, were entirely without foundation and were based on foreign newspaper gossip. In 1916 and 1917, however, the accusations produced an immense impression and finally stigmatized the Empress as the *Nemka* (German), a name by which she was almost invariably referred to in the army and among the common people.

Sturmer's Resignation. The demonstration in the Duma forced Sturmer to resign but failed to clear the political atmosphere. His successor, Trepov, was not permitted to speak when he attempted to read the declaration of his Government from the rostrum of the Duma. The Duma was prorogued until February,

1917, and reassembled for its final session in a capital that was already in the hands of the revolutionary mob.

Leadership of the State Duma. It is no exaggeration to say that from the middle of 1915 until the end of February, 1917, the State Duma was the real center of the political life of the country and the acknowledged leader of the liberal and progressive elements. In its opposition to the Government the Duma acted in close co-operation with the novel war organizations that had been created in order to meet the needs of the army.

The War-Time Organizations

The All-Russian Union of Zemstvos. The first semi-official war-time organization to make its appearance in the Empire was the All-Russian Union of Zemstvos, an association of local self-government institutions for the relief of the sick and wounded. A similar organization functioned during the Russo-Japanese War and the nucleus of an intra-zemstvos union had been retained to act as a co-ordinating organ in case of national emergencies such as famines or epidemics. The All-Russian Union of Zemstvos for the Relief of Sick and Wounded Soldiers, to give the association its full name, came into existence immediately after the declaration of war and was joined by all the provincial zemstvos except the notoriously reactionary zemstvo of Kursk. Prince George E. Lvov, the future head of the Provisional Government, became president of the Union, an office which he had held during the Japanese war.

The All-Russian Union of Towns and the Zemgor. A few days later the organs of municipal self-government followed a similar course and organized themselves into the All-Russian Union of Towns whose purpose was analogous to that of the Union of Zemstvos. Operating with funds they raised themselves, but chiefly with grants obtained from the Treasury the two Unions built up a comprehensive network of hospitals, medical supply stores, and canteens. During the early months of the War the Unions were concerned almost exclusively with the relief of war sufferers, but as the unpreparedness of the country became more and more apparent they extended their activities into other fields, especially the organization of supplies for the army and the provisioning of the civilian population. To co-ordinate this work the two Unions created in July a joint committee "for the supply of the army," known by the abbreviated name of Zemgor. This committee concerned itself with such matters as the plac-

ing of the orders of the Ministry of War and rendering assistance in their execution; the establishment of new factories and other enterprises; the evacuation of industrial enterprises from the areas menaced by the enemy; and the direct supply of the needs of the front. In the performance of their difficult task the leaders and employees of the two Unions displayed considerable ability and great devotion to duty, although of course there were exceptions to this rule, as is inevitable in a very large organization working under the trying conditions of a national emergency.

"Mobilization of Industry." The same reasons that forced the Unions of Zemstvos and of Towns to turn from the relief of the sick and wounded to the organization of supplies and the manufacturing of munitions brought into being two sets of new organs that were a distinct departure from Russia's bureaucratic tradition. These new organs were the War Industries Committees and the five Special Councils for national defense, transport, fuel, food supply, and refugees. The appearance of these organizations was a consequence of a profound change in the attitude of public opinion, a change that took place in the spring of 1915. The earlier somewhat naive belief in the virtue of the principle "business as usual" gave way to the realization of the fact that only a concerted national effort could bring the War to a successful end. "The mobilization of industry" became the new slogan, but it was also recognized that the object in view could not be achieved by the traditional bureaucratic methods, which however could not be completely discarded. Hence a solution that had all the earmarks of a compromise.

The War Industries Committees. The War Industries Committees, which came into being in the middle of 1915, consisted of representatives of industry, commerce, the Government, the Unions of Zemstvos and of Towns, and labor. The Central War Industries Committee had its headquarters in Petrograd while 28 provincial War Industries Committees were operating in different parts of the country by the end of 1915. Their object was to organize industry for the purpose of national defense. The mobilization of industry, however, was envisaged as a voluntary action of business carried out with the approval of the Government but not by its orders or under its control. It was self-mobilization rather than mobilization of industry and the initiative, too, came from business circles. An almost revolutionary departure from tradition was the inclusion in the War Industries Committee of representatives of labor. The issue of participation in

the work of the War Industries Committees split the Social Democratic Party which largely controlled labor organizations. The Menshevik wing favored participation by labor while the Bolsheviks,[1] led by Lenin, opposed it on the ground that labor should not be involved in the conduct of an imperialistic war. After some friction the Lenin faction was defeated and in the spring of 1916 labor was represented on the majority of the War Industries Committees by duly elected delegates. The Government showed its appreciation of labor's patriotic attitude in a characteristic fashion. With the connivance of the authorities an agent of the secret police, Abrosimov, succeeded in having himself elected as labor delegate to the Central War Industries Committee and all the labor members of that organization were finally arrested early in 1917.

The Special Councils. The second set of war-time institutions—the five Special Councils on national defense, transportation, fuel, food supply, and refugees—originated with the State Duma and were duly established by law in August, 1915. They consisted of representatives of the Government, the State Duma, the State Council, the Unions of the Zemstvos and of Towns, and the Central War Industries Committees. The object of the Councils was the co-ordination of policies within the sphere of their respective jurisdictions. There was undoubtedly a great deal of overlapping in the work of the Unions of Zemstvos and of Towns, the War Industries Committees, and the Special Councils, and the methods these bodies used were perhaps not always the best. Nevertheless it is generally admitted that they vastly improved the technical preparedness of the army and that the troops were better equipped and armed at the end of 1916 than they had ever been before.

Political Activities of War-Time Organizations. The Unions of the Zemstvos and of Towns and the War Industries Committees, moreover, played an important political role. Like the Progressive Bloc, they adopted the slogan of a "government enjoying the confidence of the nation," an elastic formula to which they gave at times an interpretation more radical than the official version. They not infrequently passed purely political resolutions criticizing the Government in no uncertain terms and their influence was all the stronger since the network of the institutions they controlled covered the entire country, including the army in the field. The reactionary bureaucrats of the Goremykin and

[1] See below, pp. 821-822.

Sturmer type were continuously at odds with the two Unions and the War Industries Committees, and the Empress detested them, especially A. I. Guchkov, a former President of the Third Duma and Chairman of the Central War Industries Committee. This, of course, did not make co-operation between business and the representatives of self-government, on the one hand, and the Government on the other, any easier.

Political Conditions on the Eve of the Revolution

Reports of the Police Department. By the end of 1916 the political situation had reached a stage where the inevitability of an explosion was almost universally realized. The ubiquitous political police, which was probably the only department of the Imperial Government that did its work (dirty as it was) really well, has left reports describing the state of public opinion with a wealth of detail and forecasting the course of the approaching revolution with almost uncanny precision. The Crown had utterly disgraced itself by the infamous rule of the Tsarina and Rasputin. The Government was the very opposite of a cabinet "enjoying the confidence of the nation" and the whole structure of the bureaucratic State had reached an advanced stage of decadence. Warnings of the impending doom came to Nicholas II from the members of the Imperial Family, the conservative members of the State Council, the reactionary "Council of the United Nobility," the State Duma and its President, the Unions of Zemstvos and of Towns, the War Industries Committee, and innumerable other organizations. They failed, however, to influence in the least a man who was as obstinate as he was weak.

Deeper Causes of the Impending Breakdown. Behind the breakdown of the machinery of government there were other and more powerful forces which were working for the Revolution. The War had imposed immense hardships on the country. The disorganization of the service of supply resulted in a shortage of many primary necessities, especially in the cities, in spite of the vast national resources. The army, which was poorly led and poorly equipped (the improvements of 1916 notwithstanding), had suffered terrible reverses and heavy losses. With no idea what it was fighting for, demoralized, disillusioned, and tired, it had an almost irresistible desire to lay down its arms and go home. Although this condition of the army is usually denied by patriotically minded Russian historians, it is nevertheless a fact supported by a mass of contemporary evidence.

The Revolutionary Parties. The revolutionary parties, the Social-Democrats and the Social-Revolutionaries, who have since claimed credit for the overthrow of the Imperial regime, had in reality little to do with it. Their organizations were practically wiped out of existence in the severe wave of police repressions that swept the country on the very eve of the War, a blow from which they did not recover until 1917. They did, of course, carry on some propaganda but on such a humble scale that it would be entirely unreasonable to ascribe to it an important part in the downfall of the Empire. All the revolutionary leaders were far away from the capital. Lenin was in Switzerland, Stalin in distant Siberia, Trotsky was dividing his time between his office near Union Square, New York City, and his home in the Bronx. The Imperial regime was not really overthrown: it collapsed as a result of its own inner weakness and flagrant ineptitude.

The Fall of the Empire and the Establishment of the Provisional Government

The Revolution of February-March 1917. Although the imminence of the Revolution was freely discussed in Russia at the end of 1916 and early in 1917 the fall of the Empire came in a manner that no one had anticipated. Seemingly minor popular disturbances caused by the shortage of foodstuffs broke out in Petrograd and on February 23, 1917, some seventy or eighty thousand workers went on strike. Their number rapidly increased in the days immediately following. Violent street demonstrations took place and on February 27 the troops of the Petrograd garrison began to go over to the side of the revolutionary populace. The Government, headed by the helpless Prince Golitsin and with the mentally unbalanced Protopopov in the responsible office of Minister of the Interior, was unable to offer any real resistance. On February 27 the State Duma, which had just reassembled, although abruptly prorogued refused to obey the order and elected a Provisional Committee which received the loosely worded mandate "to restore order and to deal with institutions and individuals." The Provisional Committee formed a Provisional Government headed by the then very popular Prince G. E. Lvov, President of the Union of Zemstvos. Two emissaries of the Provisional Committee of the Duma were dispatched to the Imperial Headquarters of the army but met the Emperor at Pskov where his train had been held. They had no difficulty in obtaining the

abdication of Nicholas II, who maintained throughout the eventful days of March, as well as during the trying months to follow, truly remarkable composure. The Emperor signed his abdication on March 2 but, contrary to the expectation of the leaders of the Duma, renounced the throne not only on his own behalf, but also on that of his son and heir, the Grand Duke Alexis. The Tsar nominated his brother, the Grand Duke Michael, to be his successor. By March 3, when the Duma emissaries returned to the capital, the situation had taken such a turn that the maintenance of the monarchy appeared no longer possible. The Grand Duke Michael, accordingly, signed a document in which he declined to accept the Crown and he entrusted the decision as to Russia's future form of government to a Constituent Assembly to be elected by popular vote. In the meantime the supreme authority was to rest with the Provisional Government. It was a development for which the liberal leaders of Russia were not prepared. The immense difficulties of the task confronting the Provisional Government were aggravated by the fact that its authority was contested from the very beginning by another revolutionary body that came into being on February 27. This body was the Petrograd Soviet (Council) of Soldiers' and Workmen's Deputies.

The Soviet of Soldiers' and Workmen's Deputies. The Soviet of Soldiers' and Workmen's Deputies was patterned after a revolutionary institution of the same name that had functioned in the capital in 1905 with Leon Trotsky as one of its leaders. The Soviet consisted of delegates representing the garrison and the industrial workers of Petrograd. The deputies of the State Duma, Kerensky (Labor Group) and Chkheidze (Social-Democrat), were among the members of the Presidium (presiding committee) of the Soviet. Soviets were rapidly established all over Russia and similar organizations were created in the army. The brief period of the Provisional Government (March-October, 1917) was characterized by a continuous struggle between the Provisional Government and the Soviets with the latter steadily gaining the ascendancy. It must be noted that the overthrow of the Imperial Government was the work of the revolutionary soldiery and populace of Petrograd. The rest of the country and the army took no direct part in the Revolution but merely accepted it as an accomplished fact, some with enthusiasm, others not without apprehension and fear, but all with the recognition of its inevitability.

Evolution of the Provisional Government. The Provisional

Government suffered in the course of its brief career six important changes in its composition, the evolution being continuously toward the Left. The Provisional Government of March consisted of the flower of Russian liberalism and was the embodiment of that "government enjoying the confidence of the nation" which the Progressive Bloc was striving to achieve. Its only radical member was Kerensky who accepted the portfolio of Minister of Justice with the special permission of the Soviet. One of the major changes in the composition of the Provisional Government occurred in July when Prince Lvov resigned and was succeeded by Kerensky. Further changes took place later, each of them marking the gains of the more radical elements.

Evolution of the Soviet. The Petrograd Soviet went through a similar evolution, that is, its composition was becoming more radical, but at all times the policies of the Soviet were much more revolutionary than those of the Provisional Government, and this was undoubtedly the chief cause of the Soviets' final success.

Substitutes of Parliament and the Constituent Assembly

Eclipse of the State Duma and the New Representative Assemblies. The Provisional Government was aware of its weakness and its lack of real support. Prince Lvov, while officially displaying the greatest optimism, privately admitted as early as April, 1917, that he and his colleagues were "tossed about like *debris* on a stormy sea." The State Duma, which was distinctly an institution of the Imperial regime, went into eclipse after the revolution, although its members for a while continued to meet in private sessions. The Provisional Government, itself a child of the Duma, made a timid attempt to restore some of the Duma's authority by calling in April a joint session of the members of all the four Dumas. This gathering, however, had no political influence. Three more attempts were made to find a substitute for parliament in the vain hope of creating a representative body on which the Provisional Government might rely in its struggle against the encroachments of the Soviets. The Moscow State Conference was called in August. It had some two thousand members representing the four Dumas, the Soviets, institutions of local self-government, co-operative societies, trade unions, industrialists, merchants, landowners, universities, and national minorities. In September came the Democratic Conference which, although almost as large as the Moscow State Conference, consisted chiefly of representatives of the Soviets and of the institutions of local

self-government, which had been reorganized on a more democratic basis. An offshoot of the Democratic Conference was the creation of the Provisional Council of the Republic (Russia was officially proclaimed a republic on September 1), which consisted of some 550 members representing 61 political and social groups. The Council was an advisory body which met on October 7, less than three weeks before the Bolshevik *coup d'état*. All these substitutes for a real representative popular assembly failed to achieve their purpose and did nothing to stop the rising wave of Bolshevism.

The Constituent Assembly. In the meantime the Provisional Government appointed a special committee to prepare for the elections to the Constituent Assembly. The electoral law embodied the principles of universal and equal suffrage without distinction as to sex, direct elections, the secret ballot, and proportional representation. It was certainly a welcome departure from the tortuous procedure of the pre-revolutionary days. In the election which took place, under the Soviet regime, in the middle of November, 1917, the overwhelming majority of the votes went to the Socialists. The Socialist-Revolutionary Party, which traditionally represented the interests of the peasantry, obtained 16.5 million votes, the Bolsheviks 9 million votes, while the other parties trailed far behind. The Constituent Assembly was permitted to meet in January but in view of its anti-Bolshevik majority it was dissolved the next day by the Soviet Government. The event passed almost unnoticed. In a country so remote from parliamentary tradition as Russia an elective assembly meant very little. The mere enactment of an electoral law, however liberal, is not sufficient to transform a backward, illiterate country into a democracy.

The Social Revolution

Ascendancy of New Social Groups and New Administrative Agencies. The downfall of the Imperial Government was only the first stage of the Russian Revolution. The chief element in its further development was the ascendancy of new social groups which rapidly crowded out the former ruling class—the landlords and the bureaucracy—from their position of leadership and finally destroyed them altogether. The institutions of central government either disappeared at once (the Crown, the State Council, the Council of Ministers) or slipped more gradually into oblivion (the State Duma). They were replaced by organs of a

purely revolutionary origin such as the Provisional Government and the various substitutes for parliament. The whole administrative machinery was subjected to a drastic process of democratization which was carried out either by hasty legislation or, more frequently, by the spontaneous action of the new social forces. The country was soon covered with a complex network of various committees and councils whose legal origins and functions were by no means clear but which all claimed wide jurisdiction and practically unlimited rights to participate in the conduct of public affairs. But, although the institutions of the Imperial regime were rapidly wiped out of existence the social groups that had dominated them attempted for a time to play a part in the political life of the country.

Program of the Provisional Government. The Provisional Government, it will be remembered, was formed by the Provisional Committee of the Duma which was itself the product of the inequitable Election Law of June 3, 1907. Prince Lvov and his colleagues, and later Kerensky, still carried on the traditions of an era that already belonged to the past. The Provisional Government officially espoused the theory that the revolution was caused primarily by widespread dissatisfaction with the manner in which the war was being conducted. The Government called for the continuation of the War to a victorious end and insisted on the fulfilment of Russia's obligations toward her Allies. Although they were willing to make important concessions on the land questions—especially in the later months of the rule of the Provisional Government—they maintained that all such decisions belonged to the Constituent Assembly and that order and existing conditions should be maintained in the meantime. The new Russia that they visualized was a political democracy within the framework of economic institutions based on individual ownership and freedom of business enterprise.

Aspirations of the Masses. This program was utterly at variance with the aspirations of the masses. Far from wishing to continue the War to a victorious end the rank and file of the army ardently desired immediate peace. To the Russian peasantry, who constituted the overwhelming majority of the population, freedom did not mean the introduction of parliamentary institutions about which they knew nothing, but the immediate division among themselves of the large landed estates in which they saw the real reason for their poverty and misery. The peasant-soldier in the trenches and the peasant-worker in the factory

had no thought except to hurry back to his native village so as to participate in the impending redistribution of land. This desire, which had existed among the rural population since the days of the emancipation of 1861, has been aptly described by a penetrating historian, Baron Boris Nolde, as "latent socialism without a doctrine." The long-suppressed aspirations of the peasantry now coming to the surface with extraordinary violence were fanned into flame by the propaganda carried on both in the army and behind the lines. Of this propaganda the Soviets, headed by the All-Russian Executive Committee of the Soviet, became the center. The declamations of the members of the Provisional Government about national honor and Russia's international obligations were naturally powerless to stem the tidal wave of this great spontaneous popular movement. The peasants took the law into their own hands and proceeded to divide the landed estates among themselves. The soldiers, not to miss their share of the spoils, deserted the army by thousands and by the autumn of 1917 Russia was in the throes of a violent agrarian revolution.

Divorce between the Educated Classes and the Masses. In this great national emergency the complete aloofness of the educated classes from the masses bore its evil fruit. As a contemporary document put it, the upper classes and the common people did not speak the same language and could not understand one another. To Russian liberals and to moderate socialists immediate peace was treason to the cause of the Allies and to democracy, and the seizure of land by the peasants was lawlessness; to the masses, both measures were perfectly legitimate and long overdue. In the uneven contest it was naturally the masses that were bound to win.

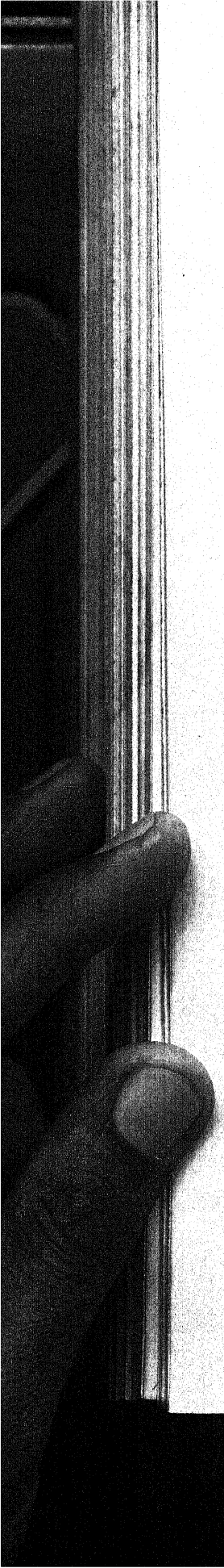
The Advent of Bolshevism

Lenin. There was among the intellectuals one group who were free from the inhibitions that paralyzed any constructive action on the part of the liberals. This group consisted of the extreme revolutionaries, especially the Bolshevik wing of the Social-Democratic Party led by Lenin.[1] The revolutionary parties, however, played no important part in the overthrow of Tsardom and the representation of the Bolsheviks in the Petrograd Soviet in March was quite insignificant. Lenin did not reach Petrograd until April, but on his arrival he threw himself at once into the struggle which to him meant the establishment not of a democratic republic but of a socialist Soviet State. This attitude was

[1] See below, pp. 821-822.

at first opposed by a number of the social-democratic leaders, including Stalin, but it gradually gained wide support in revolutionary circles, among whose leading spirits was Leon Trotsky.

Fall of the Provisional Government. The Bolsheviks had at first no powerful party organization, their financial resources were scant, their following insignificant. But the slogans they adopted were the correct expression of the wishes of the masses. Lenin demanded both the immediate end of the war and the immediate transfer of all land to the peasants, inviting the populace to "plunder what had been plundered," that is, the abolition of all private wealth. This program was summed up in the brief sentence, "All powers to the Soviets." Lenin's recognition of the decisive influence of the peasantry and his harnessing of the forces of the agrarian revolution to the service of the social revolution has been since recognized as one of the most striking manifestations of his revolutionary genius. He was not really leading the masses but was rather riding the crest of the revolutionary wave. His following increased by leaps and bounds. There was, it is true, an unsuccessful Bolshevik uprising in July, 1917. During this revolt Lenin fled to Finland where he remained in hiding. But time was working for him. In the early autumn the Bolsheviks obtained a majority in the Soviets of Moscow and Petrograd. A fresh Bolshevik uprising in October met with as little resistance as had the movement in March that overthrew the Empire. The Provisional Government of Kerensky found no more people to defend it than had the Imperial Government, although some fighting took place in Petrograd, Moscow, and other cities. On October 26 the Provisional Government had ceased to exist and the Bolsheviks became the masters of Russia.



PART II. THE U.S.S.R.

CHAPTER III. THE NATURE OF THE SOVIET STATE

The Marxian Scheme

Basic Elements of Marxism. Viewed in retrospect the downfall of the Imperial regime and the overthrow of the Provisional Government appear as two stages of the same historical process. It was only with the establishment of the Soviet rule, however, that the revolution assumed a distinctly social character. This transformation was due to the fact that the Bolsheviks who succeeded the Provisional Government were firm believers in the doctrine of revolutionary socialism associated with the names of Karl Marx (1818-1883) and Friedrich Engels (1820-1895).

A basic element in the Marxian theory is the economic interpretation of history which teaches that the political, social, religious, and other institutions of any given historical era are determined by economic factors, by the "mode of production." Starting with this fundamental proposition and operating with a theory of value derived largely from the writings of the classical economists and with a dialectical method that was an adaptation of that of Hegel purged of its idealistic assumptions, Marx and Engels submitted the capitalistic system to a searching analysis.[1] They reached the conclusion that the history of the human race must be told in terms of class struggle. Under capitalism the two great classes, confronting one another are the employers and the workers, the exploiters and the exploited. In spite of the seemingly impregnable position of the exploiters, the mechanics of capitalism and its inner contradictions prepare the way for the inevitable downfall of the capitalistic system. The impending

[1] For a simple discussion of the fundamentals of the Marxian theory see William N. Loucks and J. Weldon Hoot, *Comparative Economic Systems,* Harper & Brothers (New York, 1938).

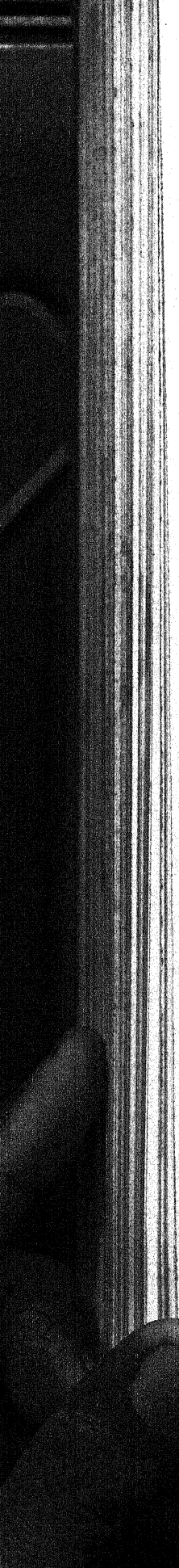
doom of capitalism must take the form of a violent proletarian revolution which will lead mankind through the transition stage of the dictatorship of the proletariat to the communist commonwealth of the future.

Lenin's Contribution. Vladimir Lenin, applying the Marxian analysis to the era of monopolistic capitalism and imperialism, reached the conclusion that bloody wars are inevitable among the imperialistic nations for the possession of their colonial empires and the defense of their overseas investments, international wars that will merge into civil wars and colonial uprisings followed by revolutions and the eventual establishment of communism. The inescapable downfall of capitalism necessarily raises the question as to how it will come about and by what form of political and social organization it will be succeeded. The clearest and most comprehensive statement of this all-important problem will be found in a celebrated little volume *The State and the Revolution* written by Lenin in August, 1917.

Communist Theory of the State

Dictatorship of the Ruling Class. According to the communist doctrine the State is the product of the class struggle, it is the instrument by which the exploiters keep the exploited, that is the masses of the toilers, in subjugation and obedience. It is always, in the phrase of Engels, "a force for suppression," the dictatorship of the ruling class (which under capitalism is the bourgeoisie) and it cannot be anything else. The fact that many of the modern capitalist States appear in the guise of democracies changes nothing in their nature but merely puts in the hands of the ruling class somewhat different and more refined methods for achieving the same object. Nevertheless the democratic form of government presents important advantages from the point of view of the proletariat: it preserves all the inner contradictions inherent in capitalism and at the same time offers the workers the opportunity to organize for the coming struggle. It is idle to expect that the capitalists who run the bourgeois State will ever voluntarily relinquish their privileged position and the downfall of capitalism can be brought about only by the forcible overthrow of the oppressors. Although history itself, they maintain, is working for the ultimate triumph of communism a successful revolution at any given moment needs the resolute and enlightened leadership of a well-organized and disciplined revolutionary party. Of all the social groups the industrial proletariat alone is pre-

UNION OF SOVIET SOCIALIST REPUBLICS
ARCTIC OCEAN
Arctic circle
NORWAY
SWEDEN
FINLAND
SVALBARD (Norway)
FRANZ JOSEF LAND
SEVERNAYA ZEMLIA
NOVAYA ZEMLIA
ALASKA
Bering Strait
Oslo
Stockholm
Copenhagen
Hamburg
GERMANY
Warsaw
Helsinki
Tallinn
Riga
LATVIA
LITHUANIA
Kaunas
Murmansk
Archangel
Leningrad
Petrozavodsk
Nordvik
Tiksi
Khatanga
Kolyma
Sredne-Kolymsk
Anadyr
Annexed by U.S.S.R. 1939
WHITE RUSSIAN S.S.R.
Minsk
Vitebsk
Smolensk
Kalinin
Orel
Moscow
Tula
Yaroslavl
Ivanovo
Gorki
Kirov
Kazan
Siktivkar
Ob
Salegard
Igarka
Yenisei
Lena
RUSSIAN SOVIET FEDERATED SOCIALIST REPUBLIC
Nizhni-Tunguska
Yakutsk
Petropavlovsk
SEA OF OKHOTSK
SAKHALIN
Alexandrovsk
KARAFUTO
Nikolaev
Amur
Khabarovsk
Blagoveshchensk
Amur
UKRAINIAN S.S.R.
Kiev
Dnepropetrovsk
Odessa
Nikolaev
Stalino
Kursk
Kharkov
Voronej
Voroshilovgrad
Sevastopol
Kerch
Rostov
Don
Volga
Saratov
Stalingrad
Krasnodar
Astrakhan
Ural
Samara
Ufa
Magnitogorsk
Chkalov
Perm
Nizhni-Tagil
Sverdlovsk
Chelyabinsk
Tobol
TRANS SIBERIAN RAILROAD
Omsk
Tomsk
Kemerovo
Novosibirsk
Krasnoiarsk
Angara
Irtysh
Barnaul
Stalinsk
Semipalatinsk
Karaganda
Lake Balkhash
KAZAKH S.S.R.
Sea of Aral
Irkutsk
Lake Baikal
Ulan Ude
Chita
Kizil Khoto
TANNU TUVA
Urga
OUTER MONGOLIA
(independent soviet republic)
Urumchi
Yarkand
SINKIANG
(to China)
INNER MONGOLIA
Peiping
Tientsin
Dairen
Port Arthur
Mukden
MANCHUKUO
JEHOL
CHOSEN
Seoul
Fusinking
Vladivostok
SEA OF JAPAN
Tokyo
Kobe
Osaka
Amur
Lena
CHINESE EASTERN R.
S. MANCHURIAN R.
Harbin
Caspian Sea
Baku
Batum
Tabriz
Teheran
IRAN
AFGHANISTAN
Kabul
Khyber Pass
Merv
Ashkhabad
TURKMEN S.S.R.
Amu Darya
Bokhara
Samarkand
UZBEK S.S.R.
Tashkent
Frunze
Alma-Ata
KIRGHIZ S.S.R.
TADJHIK S.S.R.
Lvov
Scale of Miles
0
500
1000
Raisz



pared by the very conditions under which it lives and works, by its discipline and *esprit de corps,* to assume the leadership in the impending struggle. This is exactly the task that Lenin and his followers fulfilled with such conspicuous success in October-November 1917.

"Withering Away" of the State. The State, having its origin and justification in the class struggle, can exist only so long as there are classes. The classes under capitalism are the product of economic inequality and especially of the private ownership of the means of production. The final aim of the proletarian revolution is the creation of a classless community and the first step in this direction, a step that must be taken immediately after the overthrow of the rule of the bourgeoisie, is the nationalization of all means of production. A direct transition from capitalism to communism is held to be impossible. "The proletariat needs a State . . ." writes Lenin, but "according to Marx, the proletariat, firstly, needs merely a State that withers away, that is, it is so organized that it must begin at once to wither away and cannot fail to wither away; and, secondly, the toilers need a 'State,' 'that is the organized and ruling class of the proletariat.' " In other words, the dictatorship of the capitalists will be succeeded by the dictatorship of the proletariat, and the latter will "wither away" to make room for the communist commonwealth which will be classless and therefore will not be a State. The revolutionary party to which Lenin assigned so important a role in bringing about the downfall of capitalism is to maintain its unchallengeable leadership during the transition period of the dictatorship of the proletariat.

Abolition of the Army and of the Bureaucracy. Lenin had the deepest contempt for utopias in general and for the utopian Socialists in particular. He was certainty at his best when dealing with concrete revolutionary situations and only seldom did he allow himself to forecast future developments except in the broadest terms, such, for instance, as the expression of his unfaltering belief in the inevitability of the proletarian revolution. It must be a source of some embarrassment to his successors that, in discussing the mysterious process of the "withering away" of the State, Lenin has approached the question in terms which, for him, were unusually precise and concrete.[1] He maintained that

[1] It must be understood that in the Soviet Union the correctness of Lenin's views is never questioned. Just as Mussolini in Fascist Italy, Lenin in the U.S.S.R. is "always right."

"the toilers need a State merely for the suppression of the resistance of the exploiters," and since the latter formed a small minority the breaking down of their resistance appeared to him as a matter "relatively easy, simple and natural." It was not sufficient, according to Lenin, for the victorious proletariat to take over the machinery of government, it must be broken and destroyed altogether, for the bureaucracy was a dangerous inheritance from the bourgeois regime. The proletarian State once established will "immediately begin to wither away because in a society free from class contradictions the State is both unnecessary and impossible." Lenin outlined a number of definite measures by which this "withering away" was to be brought about. First among them was, in the phrase of Marx, "the abolition of the permanent army and its replacement by the armed people," that is, a popular militia. No less important was the second step, the abolition of the bureaucracy. "Capitalistic culture," Lenin wrote, "has created large-scale production, factories, railways, the post, telegraph and telephone service, and so on, and on *this basis* the immense majority of the functions of the old 'State authority' have been so simplified and can be reduced to such elementary operations as registration, bookkeeping, and control, that the performance of these functions will be perfectly accessible to all literate people, that it will be perfectly feasible to perform these functions for the 'wage of a workingman,' that one can (and must) deprive these functions of even a shadow of something privileged, 'authoritarian.' " Civil servants therefore will be mere "supervisors and bookkeepers," positions in government service will be filled by election and the tenure of any office, without exception, will be revokable at any time. Lenin, indeed, demanded the "immediate introduction" of a system under which "*all* should fulfil the functions of control and supervision, *all* should be 'bureaucrats' for a time and therefore *no one* could become a 'bureaucrat.' " The elective representative institutions of the bourgeois democracy will be retained but "parliamentarianism, as a system, that is, the separation of the legislative from the executive power, and the immunities of the deputies" will be abolished. The proletarian representative assemblies, according to Lenin, must be a place for work, not for idle talk.

Maintenance of Order in the New Society. Lenin refused to commit himself to any definite forecast as to how long it will take for the State to "wither away." He merely stated that it was to be a natural and gradual process. With the disappearance of

exploitation by the capitalists those formerly exploited will get accustomed to observing, without any outside compulsion, the ordinary rules of a civilized community. The breaches of these rules were themselves the consequence of exploitation and of the misery and poverty of the masses. With the destruction of capitalism all the social evils it has brought in its wake will disappear. Human nature will be changed. In a classless society, to repeat, the State, that instrument of coercion, will be both unnecessary and impossible.

Socialism and Integral Communism

Socialism. The transition to communism is to be achieved in two stages. The preliminary stage, usually known as socialism but described by Marx as "the first stage of communism," is characterized by the nationalization of all means of production and, consequently, by the termination of "the exploitation of man by man," held by the Socialists to be inherent in capitalism. But the right of private ownership, except in so far as it applies to means of production, will be retained. The socialist principle that "he who does not work does not eat" will be put into effect; that is, there will be no unearned incomes. Individual earnings will be determined by the application of another socialist principle: "for an equal amount of labor an equal amount of the produce." Although the State as an instrument of class oppression will disappear, for there will be no more classes, it will still function in order to enforce the rights of private property in chattels and goods other than means of production. Complete equality will not yet be established. Integral communism will still be a thing of the future.

Integral Communism. Neither Marx nor Lenin have given a definite answer to the question as to how long it will take for socialism to evolve into integral communism and what form the organization of the future communist society will take. They have merely asserted that integral communism will be characterized by the liberation of man from slavery to the division of labor; by the disappearance of the antagonism between mental and physical labor; by the lifting of labor from the position of a tool for making a living to that of a principal necessity of life; by the many-sided development of the individual, the resulting expansion of the productive forces and the increase of social wealth. When these developments have taken place it will be possible to put into effect the principle of integral communism:

"From each according to his abilities, to each according to his needs." Only then will the State finally wither away and mankind enjoy real freedom, for freedom and the State are declared to be incompatible. Lenin wisely observed that "we do not know and we cannot know" how and when this state of affairs is to be realized. It seems difficult to escape the conclusion that integral communism as outlined by Marx and Lenin is merely a utopia.[1]

It is now being claimed by the Soviet leaders that the U.S.S.R. has reached the stage of socialism and that it is advancing toward integral communism. In what degree these claims are justified will appear from subsequent discussion.

The Question of Nationalities

Importance of the Question of Nationalities. Although the revolution, the civil war and Russia's absence from the Paris Peace Conference of 1919 resulted in the severance from the former Russian Empire of a number of important territories (Finland, Russian Poland, Bessarabia, the former Baltic Provinces—now Latvia, Lithuania, and Esthonia), the Soviet Union continues to control a vast area comprising about one-sixth of the land surface of the globe and inhabited by peoples speaking different languages and belonging to many different races. The attitude of the Communists toward the national question thus acquires considerable practical importance. Marx, according to Lenin, advocated administrative centralization rather than the federal principle. This centralization, however, was qualified by Lenin as "democratic" and "proletarian" and it did not preclude a wide degree of local autonomy. The "unity of the nation" was to find its expression in the voluntary co-operation of the organs of the regional and local government with the central administration in achieving the common objectives of the proletarian State, chiefly in fighting the resistance of the former capitalists.

Provisions of the Party Program. The program of the Russian Communist Party adopted in 1919 provided that on the question of nationality the Party must strive for close co-operation with the proletarians of other nations in the struggle for the overthrow of the landed proprietors and the bourgeoisie. In order to overcome the suspicion of the oppressed nations toward the proletariat of the State that used to oppress them the program proclaimed the complete equality of all national groups and the

[1] For the important revision of the communist theory of the State see below, pp. 923-925.

recognition of the right of the colonies and other national territories to secede. At the same time the Party favored the creation of a federation of Soviet Republics as a "transition stage toward complete unity." Particular care should be taken, they believed, to safeguard the cultural rights and to encourage the schools, literature and the use of the local languages.

Stalin's Views. Stalin explained in 1920 that the attitude of the Communist Party toward the right of secession was determined "by the concrete factors of the international situation, by the interests of the revolution." The chief consideration was the strengthening of Russia and the weakening of imperialism. "This is why the communists fight for the secession of the colonies from the Entente," wrote Stalin, "but they must at the same time fight against the severance of the border regions from Russia." He argued that the independence of Russia's former territories would be purely nominal, that they would inevitably become mere tools in the hands of the imperialistic powers. This interpretation of the right of secession renders practically inoperative the relevant articles of the successive Soviet constitutions granting the national groups within the Union the right to decide freely their own fate.[1]

"Socialism in a Single Country"

World Revolution. One more brief excursion into the wilderness of communist theory is essential in order to understand the general trend of Soviet policies since about 1925. It has already been noted that Marxian socialism, as interpreted by Lenin, is primarily a doctrine of revolution. According to this theory the socialist revolution should have occurred in one of the more advanced industrial countries, such as the United States, Great Britain, Germany, or France. In order to be successful, that is to bring about the establishment of socialism, a national revolution was not by itself considered sufficient. The creation of the socialist commonwealth required the concerted effort of at least several advanced countries. The process, as envisaged by Lenin, was the merging of the national revolutions into a world revolution. The establishment of a socialist system in a single country was not seriously considered and the idea was usually rejected as

[1] That the view expressed by Stalin in 1920 still represents the attitude of the Soviet government may be gathered from the fact that the article quoted above is reproduced in a collection of Stalin's writings, *Marksism i natsionalnii vopors* (*Marxism and the National Question*), published by the Communist Party (Moscow, 1937), pp. 224-225. See below, p. 843.

un-Marxian and utterly utopian. The fact that the first proletarian revolution occurred in a backward agricultural country like Imperial Russia was something of a shock to the more orthodox Marxists. They found solace, however, in the belief prevailing in Russian revolutionary circles after October, 1917, that the example of Russia would be followed in the near future by other European countries and, before long, by the United States. The policy of the Russian revolutionary Government was thus perfectly clear and in harmony with communist theories: it was a move toward the advancement of world revolution. Conditions throughout the world during the last phase of the Great War and immediately thereafter seemed to favor the communist cause. Fatigue, disillusionment, economic distress were undermining the social structure of every country. Political revolutions had occurred in Germany and in Austria-Hungary. Hungary was for a few months in 1919 under a communist dictatorship and Soviets made their appearance in Bavaria. The revolutionary movement, however, collapsed in its incipient stage and Europe, not to mention the New World, refused to follow the example of Russia. The "scientific" scheme of Marx and Lenin found itself grievously at variance with the course of historical events.

Stalin vs. Trotsky. If the survival of the Russian Soviet Government in the midst of a capitalistic environment was a pleasant surprise to the rulers of Moscow the failure of the world revolution was both a disappointment and an embarrassment. The situation was complicated by the death of Lenin in January 1924. The removal of the acknowledged leader was followed by a bitter struggle within the Communist Party. The two principal claimants to Lenin's mantle were Leon Trotsky, the creator of the Red Army, and Joseph Stalin, the Secretary General of the Communist Party. Although the personal element was not absent from the controversy the contest centered on a fundamental problem of communism. Trotsky, a brilliant writer and a master of Marxian dialectics, was a strong supporter of the idea of world revolution; its promotion was to him not only the chief but the sole object of the Soviet Union. Stalin, who as late as April, 1924, expressed in print the view that the victory of socialism in one country only was impossible, suddenly reversed himself.[1] He now advanced the doctrine that "socialism in a single country" was quite feasible, provided the country in question had a large

[1] See Michael T. Florinsky, *World Revolution and the U.S.S.R.* (Macmillan, New York, 1933), pp. 155 ff.

territory, a large population and all essential natural resources. This, however, was not yet the "final victory" of socialism for there always remained the danger of intervention by the capitalist nations. The discussion that ensued kept the communist bodies busy for four or five years and ended in the complete defeat of Trotsky. He was deprived of his various offices, expelled from the Party, and deported first to Central Asia and in 1929 to Turkey.

Importance of the Doctrine. The official acceptance of Stalin's theory of "socialism in a single country" was an extremely important turning point in the history of the Soviet Union. World revolution, of course, could not be and was not officially renounced, but it ceased to be an active factor in the determination of Soviet policies. In the field of international relations the Soviet Union sought co-operation with the capitalist nations; at home it embarked on a vast scheme of economic reconstruction embodied in the first and subsequent Five Year Plans. Stalin, who attached the greatest significance to his doctrine, in his report to the fifteenth conference of the Communist Party held in October-November, 1926, as well as on other occasions, strongly emphasized his belief that without full assurance that socialism could be built within the frontiers of the Union the immense effort for industrialization would have been futile. Reduced to its simplest expression it may be said that the issue was one of internationalism versus nationalism. It was nationalism that won the day and became the cornerstone of Soviet domestic and foreign policies.

History of the Russian Communist Party

The Russian Social-Democratic Labor Party and the Communist Party. It has already been pointed out that in the program of Marx and Lenin the party of the revolutionary proletariat occupies an extremely important place. It is no exaggeration to say that the All-Union Communist Party of the Bolsheviks ($VKP_{(b)}$) is the mainspring of the Soviet regime. Its present name is of recent origin. The beginning of the organization goes back to 1898 when the first congress of the Russian Social-Democratic Labor Party was held in Minsk, Russia. The congress was attended by merely nine members and Lenin, who was in exile in Siberia, was not among them. The second congress of the Party, which was held in 1903 in Brussels, met with difficulties with the police and was transferred to London. This assembly was marked by a cleavage arising from a minor dispute over questions of organization. The majority group, led by Lenin

and Plekhanov, formed the faction of the Bolsheviks (literally "majority") while their opponents became known as the Mensheviks (literally "minority"). It was only gradually that the seemingly unimportant friction within the Social Democratic Party developed into a real parting of the ways, the Bolsheviks generally supporting the more radical policies. The second congress approved the party's program and charter, both of which survived until the Revolution of 1917. The program and the subsequent activities of the Party were directed chiefly toward the overthrow of the Imperial regime and the improvement of the position of the working class. The program made some reference to the proletarian revolution but little serious thought was given to an event that appeared to the majority of the members as extremely remote, and to some as even improbable. The activities of the Party were divided between revolutionary propaganda, including the publication of newspapers which led a precarious existence and had an extremely modest circulation, and internal strife and disputes accompanied by much bitterness and mutual excommunications. Until 1917 there was nothing to indicate that the Social-Democratic Party was destined to rule the former Russian Empire. In 1918, after the advent of the Bolsheviks to power, the Bolshevik faction of the Social-Democratic Party took the name of the Russian Communist Party of the Bolsheviks. In December 1922 Russia became the Union of Socialist Soviet Republics and in 1925 the Party once more changed its name to that of the All-Union Communist Party of the Bolsheviks. It is officially described as a section of the Third (Communist) International.[1]

The Program of 1919 and Its Proposed Revision. In 1919 the eighth congress of the Party approved the new program which gives an outline of the impending doom of capitalism and imperialism and provides for measures of practical policy devised in agreement with Lenin's analysis of the period of transition from capitalism to communism. The 1919 program is no longer considered adequate. The eighteenth congress of the Party appointed on March 20, 1939, a commission of 27 members under the chairmanship of Stalin to draft a new program for submission to the next party congress.

Organization of the Communist Party

The Party's Character and Aims. The organization of the All-Union Communist Party has been altered several times, the

[1] See below, pp. 916-917.

more important earlier changes being introduced in 1922 and 1925. Since 1934 the constitution of the Party has been determined by the charter unanimously approved by the seventeenth congress in February, 1934, and amended by the eighteenth congress in March, 1939. The charter described the Party as "the organized vanguard of the proletariat of the U.S.S.R., the highest form of class organization. The Party leads the proletariat, the toiling peasantry and all toiling masses in the struggle for the dictatorship of the proletariat, for the victory of socialism. The Party is the leader of all the organs of the proletarian dictatorship and assures the successful building up of the socialist society.[1] The Party is a united fighting organization bound by conscious iron proletarian discipline. The Party is strong through its unity, its singleness of will and a singleness of action incompatible with deviation from the program, with breach of party discipline, or with the formation of factions inside the Party." All members are pledged to work actively and unselfishly for the achievement of the aims stated in the program and in the charter.

Admission to the Party under the 1934 Charter. Admission to the Party is based exclusively on the ground of personal merit. Until 1939 the requirements for admission, which were made more stringent by the charter of 1934, varied with the standing of the applicants, who were divided into four groups: (1) industrial workers of five years' standing; (2) industrial workers of less than five years' standing, agricultural laborers, the Red Army men who were formerly workers or collective farmers, and "technicians"; (3) collective farmers, members of peasant handicraft co-operative organizations and teachers in elementary schools; (4) other employees. Each applicant was to be sponsored by from three to five party members of five years' standing. In the case of group four the sponsors were to be party members of ten years' standing. Former members of other political parties might be admitted only with the approval of the Central Committee of the Party. The credentials of each applicant were checked by the local and higher party organizations, and the standing of the

[1] This part of the preamble to the charter was revised in 1939 and now reads as follows: "The All-Union Communist Party of the Bolsheviks, being a section of the Communist International, is the organized vanguard of the working class of the U.S.S.R., the highest form of class organization. The Party is guided in its work by Marxist-Leninist theory. The Party leads the working class, the peasantry, the intellectuals, that is all the Soviet people, in the struggle for the strengthening of the dictatorship of the working class, for the strengthening and development of the socialist order, for the victory of communism. The Party is the leading nucleus of all organizations of toilers, both social and State, and ensures the successful construction of communist society."

applicant determined which of the higher party organs should give the final sanction. Applicants under twenty years of age were admitted solely through membership in the *Komsomol* or Union of Communist Youth. The sponsors were held responsible for the candidates they recommended and if the latter proved unworthy the sponsors were liable to disciplinary measures including expulsion from the Party.

Candidates. Admission to full membership is preceded by a period of probation, the prospective members being known as candidates. Until 1939 the probation period was one year for applicants in group one, two years for those in groups two, three, and four, and three years for the former members of other parties. The requirements for admission as a candidate are similar to those for admission as a party member. The candidates participate, with a consultative vote, in the work of the party organs to which they are attached. They pay monthly dues ranging from 0.20 rubles for those earning less than one hundred rubles per month to three per cent of their wages for those receiving five hundred rubles or more.

"Sympathizers." Since 1934 there have also been "sympathizers' groups" which are attached to primary party organs. The "sympathizers" are described as non-party men and women who, although they have proved their devotion to the Party are not yet sufficiently prepared to join it. It is their duty to attend the open meetings of the party organs, they have the right of consultative vote, and they must strive for the fulfilment of the decisions of the Party. The "sympathizers' groups" were abolished in 1939.

Primary Party Organs. The party organization embodies the principle of "democratic centralization" and comprises an extensive network of territorial agencies. The basic units of this complex structure are the primary party organs, formerly known as communist "cells." A primary party organ is established in every industrial or commercial enterprise, factory, collective farm, State farm, machine tractor station, Red Army unit, office, and so on, provided there are three party members. If the enterprise, farm, etc., has less than three party members the primary party organ is formed by candidates and members of the *Komsomol* under the leadership of the higher party organ.[1] The duties of the primary party organs are agitation for the fulfilment of party slogans;

[1] The number of primary party organs in March, 1939, according to Stalin's report to the eighteenth congress, was 13,060, that is, only a small percentage of the industrial enterprises and collective farms had primary party organs.

progaganda among prospective members and their political education; co-operation with the higher party organs; mobilization of the workers for the fulfilment of the plan and the strengthening of labor discipline; struggle against indifference and abuses and for the improvement of the position of labor; "active participation in the economic and political life of the country." The duties of the primary party organs were extended in 1939.

Higher Party Organs. On the foundation of the primary party organs is built the pyramid of higher party organs with a steadily expanding territorial jurisdiction. Each town and country *(rayon)* has its party conference that meets at least once a year, its committee, its bureau consisting of five to seven members, and its secretary. Until 1939 the secretary of a town committee had to be a party member of ten years' standing; the secretary of a county committee, a member of seven years' standing. Above the town and county party organs are those of the major territorial subdivisions of the Soviet Union: the constituent republics, the territories (*krai*) and the provinces (*oblast*). Each of these has its own party conference (or congress of the national Communist Party of the constituent republic) which meets at least once every eighteen months; its committee of not more than eleven members, and two secretaries who until 1939 had to be party members of twelve years' standing. The All-Union Congress of the Party with its Central Committee crowns the party organization. The whole structure is based on the principle of hierarchy, the lower institutions being responsible to the higher ones and subject to their supervision. The officers elected by the lower organs are confirmed in office by the higher ones.

The All-Union Congress and the Central Committee of the Party. In theory the supreme authority of the Party is the All-Union Congress which is scheduled to meet at least once every three years. This rule, however, is loosely observed in practice. The sixteenth congress met in June, 1930, the seventeenth, in January, 1934; the eighteenth congress in March, 1939. As the congresses are much too numerous [1] and their sessions too short to make possible the exercise of actual control over the work of the Party, they invariably vote unanimously for the resolutions

[1] The sixteenth congress had 2,159 members of whom 1,268 had a "decisive" and the balance a "consultative" vote; the seventeenth congress had 1,961 members of whom 1,225 had a "decisive" vote; the eighteenth congress had 2,040 members of whom 1,574 had a "decisive" vote. In addition to congresses the Party from time to time calls "conferences" which also are numerous assemblies. No provision for party conferences was made in the party charter, until its amendment in 1939.

submitted by the leaders. One of the functions of the congress is to elect the Central Committee which consists of some seventy members and approximately the same number of alternates. The Central Committee, which, again in theory, carries on the work of the Party between the congresses, actually meets at considerable intervals. It is generally believed that the Party is run by three agencies appointed by the Central Committee: (1) the Secretariat headed by Stalin as Secretary General; (2) the Political Bureau and (3) the Organization Bureau. The functions of these two bureaus, which are reported to have ten members each, are not clearly defined. Another important agency is the Committee of Party Control which was, before 1939, elected by the congress and delegated to watch over the discipline and conduct of party agencies and members. The Central Committee, moreover, shares with the republican, territorial and provincial committees, the work of supervising a large number of special party institutions which deal with practically every aspect of national life (agriculture, industry, transportation, planning, finance, commerce, culture, and so on). It would seem, indeed, that far from "withering away" the State bureaucracy that Lenin so deeply hated has been duplicated under the Soviet regime by a no less formidable party bureaucracy.

The Party and the Soviet Constitution. Until the adoption of the new Constitution the Party had no official standing under the Soviet law. Article 126 of the Constitution, however, recognized the Party as an organization of "the most active and politically conscious citizens" and its agencies as "the leading nucleus of all organizations . . . both social and State," while Article 141 states that the Party is entitled to nominate candidates for elective assemblies.

"The Intra-Party Democracy"

Rights and Duties of the Members. It is the primary duty of the party member to carry out the decisions of the Party, to conform with the "general line" of party policies after they have been duly approved. But, according to the charter, it is the inalienable right of each party member to participate freely in the determination of these policies. This is what is meant by "intra-party democracy" which is declared to be the very foundation of "Bolshevik self-criticism" and "conscious discipline." Indeed, the whole history of the Party both before and after the revolution of 1917 is an almost uninterrupted series of inner

clashes over questions of policy. Under the regime of Stalin, however, "intra-party democracy" has been made subject to drastic restrictions. A broad discussion of party policy is now permitted only under the following conditions: (1) that the necessity of such discussion be recognized by at least several (the exact number is not stated) republican or territorial party organizations; (2) that there be no "sufficiently strong" majority in the Central Committee on fundamental questions of policy; (3) that when there is such a majority, the Central Committee nevertheless considers the discussion desirable. The Central Committee thus has effective means of stifling any discussion of policy it may dislike and since the membership of the Central Committee is actually decided by the party leaders headed by Stalin and only formally voted upon by the congress the practical significance of "intra-party democracy" seems to be very slight indeed. The official reason for these stringent restrictions is to preserve the inner unity of the Party and "to prevent all attempts of a small minority to force its will upon the vast majority." The Central Committee, moreover, has the power to subject recalcitrant members to measures of party discipline including expulsion. Similar penalties may be imposed upon the members of the Central Committee subject, however to a two-thirds vote of the Central Committee itself.

Mass Purges and the Recent Trials. From time to time, at the decision of the Central Committee, the membership of the Party is submitted to a thorough examination from the point of view of ideological orthodoxy, devotion to the cause of communism, and personal character and behavior. Such purges invariably lead to the expulsion of a large number of members and candidates and to the demotion of others. Major purges took place in 1921, 1926, 1927, 1929 and 1933. The murder in December, 1934, of S. M. Kirov, a member of the Political Bureau and a close political friend of Stalin, was the starting point of a new era of purging that lasted through 1938. The purge that followed Kirov's murder differed considerably from those preceding it. It was no longer a question of cleansing the Party of undeserving members but of exterminating altogether the vast majority of the old Bolshevik leaders. Sensational trials were staged in the Hall of Columns of the former Nobles' Club in Moscow. The list of the accused read like the *Who's Who* of the Russian Revolution and included former members of the Soviet Government, leaders of the Third International, army commanders, ambassadors, the

head of the secret police, and many others.[1] The crimes of which they were accused included murder and attempt at committing murder, high treason, plotting with the fascist powers and "wrecking." Leon Trotsky, who vehemently protested from his place of exile abroad, was the alleged instigator of a conspiracy that seemingly had endless ramifications. A great many other communist leaders, among them holders of high offices, were removed in a less spectacular manner. Their dismissal was briefly noted in the back page of a Soviet newspaper and in numerous cases even this formality was omitted: they simply dropped out and their ultimate fate remains a matter of conjecture. The purge extended to every sphere of Soviet life and was carried out with ruthless thoroughness even in the remotest corners of the land, in the army and navy, in factories and on the farms. It has been officially admitted that not a few of the "purgers" were guilty of excess of zeal and that they were also sometimes motivated by base personal considerations or vindictiveness. This led to the second phase of the stupendous drama—the "purging of the purgers." It seems difficult to escape the conclusion that the effects of the extraordinary action taken by the Communist Party will prove as lasting as they were destructive.

Confessions. A notable aspect of the trials was the confessions in which the communist chieftains of yesterday not only admitted the crimes of which they were accused but vied in claiming for their actions the most despicable and selfish motives. The confessions, which followed one another with monotonous uniformity, were the chief evidence against the alleged conspirators. The behavior of the accused men at the trials was certainly unique and without precedent in the history of any country. No one has yet succeeded in explaining it adequately. It is often claimed that communism will change human nature, and the conduct in court of the communist leaders who were "fighting" for their lives suggests that in this instance at least the claim is well justified.

Re-writing History. The hasty re-writing by Soviet scribes of the history of the Russian Revolution has been a characteristic by-product of the great purge. For instance, the official history of the All-Union Communist Party published at the end of 1938 either does not mention the fallen leaders who once fought with

[1] For a telling but incomplete list of the accused and a record of their fate see Paul Scheffer, "From Lenin to Stalin," in *Foreign Affairs,* April, 1938. Also Joseph Barnes, "The Great Bolshevik Cleansing," in *Foreign Affairs,* April, 1939.

Lenin and who only recently shared with Stalin the applause of the crowds, or it represents them as villains and near-monsters. This vilification extends not only to the closing chapter of the career of the victims of the purge but it includes the earlier period when they struggled against the Imperial regime or held high offices under the Soviets. No enemy of communism could have devised a more bitter indictment of the Russian revolutionary movement.

Stalin on "Cutting Off" Errant Members. Stalin's conversion to the method of destroying his opponents within the Party is relatively recent. "We know that the policy of 'cutting off' [errant members] is fraught with danger to the Party . . ." he declared before the fourteenth congress of the Party in December, 1925. "Today we cut off one, tomorrow—another, the day after tomorrow—a third. But—by then, what will be left of the Party?" Stalin has since changed his mind but the question he asked in 1925 is more timely than ever. It seems clear that the great purge has dealt the "intra-party democracy" a blow from which it will take a long time to recover.

Amendment of the Communist Party Charter, 1939

Reasons for the Amendment. The disastrous effect the great purge must have had upon the morale of the rank and file of the Communist Party has presumably inspired the Amendment to the party charter approved by the eighteenth congress of the Party in March, 1939, although the official reason given was the rapid transformation of the Soviet Union into a socialist classless society. The purpose of the Amendment would seem to have been the rejuvenation of the Party and the promotion of added security and encouragement for the younger generation of communists brought up in the school of Stalin.

Rules for Admission, 1939. The Amendment did away with the former division into four classes of applicants for membership. All applicants (except former members of other political parties for whom the rules laid down in the charter of 1934 remain in force) are required to be endorsed by three party members of three years' standing who have known the applicants as co-workers for at least one year. Admission of new members is made effective after the approval of the decision of the primary party organ by the party committee of the county or of the city. The advancement of candidates to full membership is facilitated by the rule that they must qualify for promotion by signifying

their consent to submit to party discipline and to the other requirements of the charter and by "accepting" the party program which, however, they need not understand: the Party itself will take care of the education of its new members in the tenets of revolutionary Marxism after their admission.

Rights of the Members Defined. The Amendment defines in greater detail the rights of the party members, although it adds little to what was contained in the charter. The members are specifically entitled: (1) to criticise at party gatherings any member of the Party; (2) to vote in party elections and to hold party office; (3) to be heard when their personal conduct is being investigated; (4) to ask information or to make representations to any party agency, including the Central Committee. That such a clarification of members' rights should be necessary is in itself a telling comment on the practical working of "intra-party democracy."

Abolition of Mass Purges. More significant is the abolition of periodical mass purges although the Party retains the right to cleanse its ranks of undeserving members "as a matter of routine." Special care, it is pointed out, should be taken to desist from expelling members for minor offenses. Candidates are entitled to promotion to full membership after one year, except former members of other political parties for whom the rules of the charter of 1934 remain in force. The Amendment emphasizes the use of the secret ballot in party elections and provides that voting shall be for individual candidates and not for entire lists of candidates, an illegal practice never sanctioned by the charter, although it appears to have been widely used.

Changes in the Administrative Structure of the Party. The structure of administrative party agencies attached to the Central Committee is somewhat altered and strong emphasis is put on propaganda and educational activities. The Committee of Party Control is elected not by the party congress, as in the past, but by the Central Committee, under whose direction it works. The Amendment provides for All-Union party conferences of representatives of local party organizations to be held at least once a year, thus legalizing a practice long in existence. The method of electing representatives to the conferences is to be determined by the Central Committee, and the decisions of the conferences are subject to the approval of that Committee. The conferences have the right to replace the members of the Central Committee to the extent of one-fifth of its membership, the new members

being chosen from among the alternate members of the Central Committee[1] whose place is taken by new alternate members elected by the conference. Decisions of the conferences dealing with the replacement of members of the Central Committee need not be sanctioned by the latter.

Qualifications for Holding Party Offices, 1939. The length of party affiliation required for qualifying for the office of secretary in the communist organizations of the constituent republics, territories and provinces has been diminished from twelve years to five, for those in the cities—from ten to three, and for those in the counties, from seven to three. One year party membership is now a sufficient qualification for the secretaries of the primary party organs (the former requirement was two and three years). The Amendment provides for the creation of party organizations in the regions *(okrug)* not mentioned in the charter.

Strengthening of Primary Party Organs. The already predominant position of the primary party organs was further strengthened by the provision that the primary party organs in "the productive enterprises, including the State farms, and collective farms and machine tractor stations . . . receive the power to control the work of the administration of such enterprises" for which they are held responsible. In the People's Commissariats, where for technical reasons such control is not feasible, the primary party organs "must single out the defects in the operation of the institution, take note of the defects in the work of the commissariat and of individual employees and forward pertinent materials and considerations to the Central Committee of the Party and to the leaders of the commissariat." Every primary party organ having at least fifteen members elects an executive bureau of three to seven members.

The Komsomol and "Sympathizers." The age limit for admission to the Party has been lowered from 20 to 18 years and special facilities are given to the members of the *Komsomol* or Organization of Communist Youth. The participation of the *Komsomol* in the political and economic life of the country is to be increased and it is to exercise the functions of party control, especially in those industrial enterprises and collective farms which have no primary party organs. On the other hand the "sympathizers' groups" have been discontinued. The reason for this decision is that the "sympathizers" did not live up to expectation: of the total number of candidates admitted to the Party in

[1] See above, pp. 825-826.

the two years preceding the eighteenth congress only 21 per cent came from this group.

Probable Effect of the Amendment. Except for the by no means unimportant changes mentioned above the constitution of the Communist Party remains what it has been since 1934. The eighteenth congress and the Soviet press dutifully acclaimed the Amendment as a new charter of communist liberties. That the Amendment will inject new blood in the Party is clear: whether it will succeed in restoring the shattered morale of the membership is less certain. The report presented by A. Zhdanov, a member of the Political Bureau, to the eighteenth congress unfolds an amazing and shocking picture of gross abuse of power and a "heartlessly bureaucratic" attitude taken by the party chieftains toward the rank and file. Will the provisions of the Amendment succeed in eradicating these conditions when vigilance in detecting "domestic enemies" continues to be one of the Party's principal slogans? The record of the Communist Party under the leadership of Stalin does not augur well for the future of "intra-party democracy."

The Numerical Strength of the Party

Size of the Membership. In view of the position occupied by the Communist Party its numerical strength is of considerable interest. The unfortunately incomplete and contradictory data on this important question are summarized on p. 833.

Effects of the Great Purge. The figures given throw an interesting light on the magnitude of the recent purge. Admission to the Party was closed from 1933 to November 1, 1936. According to announcement in the *Pravda* of February 4, 1939, the Party has admitted "in the last two years" 180,000 members and 471,000 candidates. Between 1934 and March 1, 1939, the number of members declined by 286,000 and that of the candidates by 46,000. The purge therefore involved the expulsion of some 466,000 members, or almost 25 per cent of their total number in 1934, and of 516,000 candidates, or well over 50 per cent of their total number in the same year. Even when allowance is made for mortality among the Communists these figures indicate that approximately one member out of four and one candidate out of two was expelled between 1934 and the beginning of 1939. According to Stalin's much quoted dictum "to the rank and file of the party members to remain within the fold of the Party or to be expelled is a question of life and death." Stalin compared

MEMBERSHIP OF THE ALL-UNION COMMUNIST PARTY (FORMERLY THE BOLSHEVIK WING OF THE RUSSIAN SOCIAL DEMOCRATIC PARTY)[1]

Year	*Members*	*Candidates* (IN THOUSANDS)	*Total*
Beginning 1905	—	—	8.4
Beginning 1917	—	—	23.6
April, 1917	—	—	40.0
August, 1917	—	—	200.0
Beginning 1918	—	—	115.0
Beginning 1920	—	—	431.4
March, 1920	—	—	611.9
January, 1922	410.4	117.9	528.3
January, 1923	381.4	117.7	499.1
January, 1924	350.0	122.0	472.0
January, 1925	420.6	351.4	772.0
January, 1926	638.3	439.8	1,078.1
January, 1927	774.8	372.3	1,147.1
January, 1928	913.2	391.2	1,304.4
January, 1929	1,089.6	442.7	1,532.3
January, 1930	1,182.3	492.6	1,674.9
January, 1934	1,874.5	935.3	2,769.8
March 1, 1939	1,588.9	888.8	2,479.7

expulsion from the Party to execution by the firing squad for army men. Many of the expulsions have been revised since and members and candidates reinstated. It was disclosed at the eighteenth congress that a very large percentage of the expulsions were made on the ground of lack of interest in party activities. Official spokesmen have admitted that the effects of the purge on the morale of the party members has been disastrous. To what extent the 1939 Amendment to the party charter will succeed in restoring morale remains to be seen.

Rejuvenation of the Party. The rejuvenation of the Party accomplished by the purge is suggested by the composition of the eighteenth congress. Half of the delegates (49.5 per cent) receiving a "decisive" vote were 35 years old or younger; another 32 per cent were in the age group 36-40, that is an overwhelming majority of the delegates had received their training under the

[1] The figures for the period before 1930 are taken from an article by A. Bubnov which appeared first in Volume XI of the Great Soviet Encyclopaedia and was issued separately in 1931. The figures for 1930 are taken from the official *History of the Communist Party of the Soviet Union* published in 1938; the 1939 figures are those of the eighteenth congress. There is some discrepancy in the figures that appear in the Encyclopaedia and the History and the data used by Bubnov do not always agree. The contradiction may be explained either by the difference in the methods of computation or, more likely, by the fact admitted by the official History that "a state of intolerable chaos in registering communists" existed in 1933 in a number of local party agencies. It may be surmised that these conditions were not entirely limited to the year 1933.

regime of Stalin. The congress elected a new Central Committee of 71 members and 68 alternates. Only 16 members of the new Committee were members of the last one, which was elected in 1934.

Its Social Structure. Information on the social structure of the Party is out-of-date. On January 1, 1930, the membership was distributed as follows: industrial workers, 65.3 per cent; peasants, 20.2 per cent; employees, 13.4 per cent; others, 1.1 per cent. In the first to the fifteenth party congresses (1898-December, 1927) not a single peasant was elected to the Central Committee as either a member or an alternate, although in 1927 the peasants formed 19 per cent of the entire membership and in 1924 as much as 28.8 per cent. In 1929 51.1 per cent of the commanders (officers) of the Red Army were Communists. Women, on January 1, 1930, accounted for 14 per cent of the membership. More recent data are not available. At the eighteenth congress 13.3 per cent of the full-fledged delegates elected on the principle of proportional representation came from Moscow and 9.1 per cent from Leningrad. The two capitals therefore remain the stronghold of the Party. Out of 1574 full-fledged delegates to the eighteenth congress only 63 were employed in agriculture, while the army, the navy and the police (People's Commissariat of the Interior) sent 283 representatives.[1]

Its Leading Role. The population of the Soviet Union in 1939 was given by Stalin as 170 millions.[2] Of this number the 2,479,000 Communists represent about 1.5 per cent. In spite of its numerical weakness the role of the Party in the affairs of the country is overwhelming. Practically all the important offices in the Soviet State are in the hands of the Communists. Of the 1,143 deputies elected in December, 1937, to the two houses of the new Soviet parliament 870 were party members or candidates. The monopolistic position of the Communists is, of course, in perfect agreement with the theory of Marx and Lenin. The Soviet Union

[1] The party bureaucracy was represented by 659 delegates; industry, 230; Soviet administration and the trade unions, 162; transportation, 110; the *Komsomol*, 27; art and science, 35.

[2] This figure is merely an approximation. The second Five Year Plan estimated the population in 1937 as 180.7 millions. More reliable information may be expected when the results of the Soviet census taken early in 1939 have been tabulated and published. According to an official statement issued in June, 1939, the preliminary figure of total population, as determined by the Census of 1939, was 170.5 million. The census taken in 1937 and acclaimed at the time as one of the greatest accomplishments of the Soviet State has since been cancelled on the ground that it violated the very fundamentals of census-taking. Why these flagrant shortcomings were not detected earlier has not been explained.

is still officially in the stage of the dictatorship of the proletariat and that dictatorship must be exercised through the instrumentality of the Communist Party which in Russia claims to be the proletariat's sole acknowledged leader.

CHAPTER IV. THE CONSTITUTIONAL AND ADMINISTRATIVE STRUCTURE

Division of Soviet History into Periods

The Introductory Period. It is both customary and convenient to divide Soviet history into four periods, although the line between them is by no means always clear. The first or introductory period, lasting from the advent of the Bolsheviks to power (October-November, 1917) until the middle of 1918, was characterized by the confident expectation in Moscow that world revolution would soon be an accomplished fact. Outside Russia, however, opinion as to the probable course of events was lacking in unanimity; some anticipated the spread of communism while others expected the inevitable and speedy downfall of the Soviet rule. In February, 1918, the Moscow government was forced to sign with the Central Powers the extremely harsh Treaty of Brest-Litovsk. The domestic policies of the Soviets were not yet clearly defined. Trotsky has well described the early decrees as the announcement of a party doctrine "in the language of power," rather than measures of practical policy. Land, banks, foreign trade, and some separate branches of industry and individual enterprises were nationalized. The Bolsheviks had no concrete land program and borrowed from the Social-Revolutionary Party its program of "socialization" of land. "Socialization" extended to the entire national territory the traditional peasant form of land tenure (communal tenure or *mir*), proclaimed the right of every citizen to a land allotment provided he was willing to work on it, and decreed the periodical redistribution of all agricultural land among the farmers in order to maintain equality in the size of the allotments. This utopian scheme was of course never actually applied but it gave an appearance of legal sanction to the occupation of the landed estates and their division among the local peasants, a process that had already begun spontaneously in the summer and early autumn of 1917.

War Communism. The second period, known as War Communism, lasted from the middle of 1918 until the spring of 1921. This was a period of civil war and foreign intervention. The so-called White Armies organized by anti-Bolshevik Russians were openly supported by foreign powers. First the Germans and later the British, French, United States, and Japanese troops occupied various sections of the Russian territory. The blockade of Russia was organized by her former Allies. War with Poland broke out. Hard pressed from every direction the Soviet Government embarked on a policy of wholesale nationalization of industry and drastic regimentation of agriculture. Rigid centralization, militarization of labor, requisition of agricultural produce, and an attempted elimination of the money economy which was to be replaced by State organized barter, were among the chief features of this period. Although most of these measures remained a dead letter many Left Wing Communists saw in them the embodiment of integral communism. The extreme economic disorganization and the ruthless exploitation of the peasantry led to violent agrarian uprisings against the Soviets and to mutinies in the army. In the meantime the White Armies collapsed one after another, war with Poland was terminated, the blockade was lifted, and foreign troops returned home. War Communism was abruptly abandoned.

The New Economic Policy. The next period, known as that of the New Economic Policy or the period of restoration—that is, a return to pre-war economic levels—lasted from the spring of 1921 to about 1927. In the international field it was characterized by the reluctant admission of the somewhat disturbing fact that the Soviet Union and the capitalist countries must continue to exist side by side. In April, 1922, the Soviet Government was officially recognized by Germany (Treaty of Rapallo) and in 1924 by Great Britain, Italy, and France. Recognition by the United States was delayed until 1933. A welcome relaxation manifested itself in domestic policies. The strict regimentation of War Communism was discarded, currency was stabilized, and the peasants were again free to dispose of most of the produce of their farms. A limited degree of economic freedom was conceded in other spheres, especially in distribution. It was generally although erroneously believed abroad that the communist experiment was over and that Russia was returning to "normal" conditions, that is, to an economy based on private enterprise. Toward the end of the period of the New Economic Policy the situation had greatly

improved. At the same time the Party definitely accepted Stalin's theory concerning the possibility of building an integral socialist system in a single country.

The Period of Socialist Reconstruction. About 1927 began the fourth period in Soviet history, a period that has not yet been closed. It is the period of socialist reconstruction characterized by a gigantic drive for the rebuilding of the country on a socialist basis. The main features of this era are the first and subsequent Five Year Plans, that is, the introduction of planned economy, the collectivization of farming, and the inauguration of Soviet democracy with the adoption in 1936 of the new Constitution. Oddly enough the latter much advertised event coincided with the great purge.

Early Constitutions

The Constitutions of 1918 and 1924. The Constitution of 1936 had two predecessors. The first Constitution was adopted by the fifth Congress of the Soviets on July 10, 1918.[1] It sanctioned much of the Soviet form of government that came into existence more or less spontaneously after the downfall of the monarchy in March, 1917. The State it established was the Russian Socialist Federated Soviet Republic (RSFSR) whose territory was considerably smaller than that of the present Soviet Union since at that time many parts of the country were still held by anti-communist forces. The Constitution of 1918 and its preamble, "The Declaration of the Rights of the Working and Exploited People," were imbued with the militant spirit of the newborn dictatorship of the proletariat. This character was retained in the second Constitution which was adopted by the second All-Union Congress of the Soviets in 1924, after the first All-Union Congress in December, 1922, established the Union of Soviet Socialist Republics. The Union originally was formed by four constituent republics: the RSFSR, the Ukraine, White Russia, and Transcaucasia. The Uzbek and the Turkmen constituent republics were carved out in 1924, and the Tadzhik constituent republic in 1929, raising the total number of constituent republics to seven. The Constitution of 1924 provided for a federal form of government. The administrative structure consisted of a pyramid of Soviets (councils) whose territorial jurisdiction was gradually broadened. At the bottom of the pyramid were the vil-

[1] The numbering of the Congresses of the Soviets was started anew with the formation of the Soviet Union in December, 1922.

lage Soviets, then came the county (*rayon*) and city Soviets; above them were the Soviets of the territories (*krai*), provinces (*oblast*), and the constituent republics; at the very top of the pyramid was the All-Union Congress of the Soviets, in theory the supreme organ of the Union.

Franchise and Elections under the Constitutions of 1918 and 1924. The whole of this structure, as has already been pointed out, was permeated with the militant spirit of the proletarian dictatorship. The following categories of citizens were disfranchised: persons employing hired labor for the purpose of extracting profit; persons living on income not derived from work; private traders, monks and ministers of religion; former police officers and members of the former royal family; lunatics and persons condemned for disgraceful crimes. Moreover the number of deputies sent to the All-Union Soviet and to the Soviets of the constituent republics was one deputy per each 25,000 city electors and one for every 125,000 of the rural population. This allotment gave a definite preponderance to the urban proletariat. The Soviet structure under the first two Constitutions was based on the principle of indirect elections, that is, the deputies to the Soviets ranking above those of the village, were chosen not by the electorate but by the lower Soviets. Voting was carried on by the show of hands instead of by the secret ballot customary in bourgeois democracies. The distribution of the right to vote was somewhat capricious and by no means easy to comprehend, based as it was on a combination of the territorial principle with that of the "unit of production," that is, some of the electors voted as residents of a certain district, others as employees in a factory or similar establishment.

Rejection of the Principle of Separation of Powers. The first two constitutions, moreover, did not recognize the separation of powers, the traditional segregation of the legislative, executive, and judiciary functions. These were all concentrated in the hands of the All-Union Congress of the Soviets and in the agencies it appointed. The functions of the Soviets, which met at long and irregular intervals, were perfunctory and the actual business of government was carried on by officers and organs they elected, under the control, of course, of the Communist Party which was not even mentioned in the first two constitutions.

The All-Union Congress of the Soviets and Its Organs. The All-Union Congress of the Soviets, an assembly of over two thousand members, met at intervals of three or four years, although

the Constitution of 1924 provided that it should meet at least once a year. Its chief functions consisted in listening to the declarations of the leaders and in electing the Central Executive Committee which exercised all legislative and executive power in the interval between the meetings of the All-Union Congresses. Since about three-fourths of the members of the All-Union Congresses were invariably Communists the list of members of the Central Executive Committee submitted by the leaders was unanimously elected. The Central Executive Committee was composed of two separate bodies: the Council of the Union consisting of several hundred members elected on the basis of population, and the Council of Nationalities, a smaller assembly made up of five members from each of the territorial subdivisions of the Union. A Presidium of eighteen members elected by the Central Executive Committee was an important element in the legislative and administrative machine.

Other Governmental Agencies under the Earlier Constitutions. The Central Executive Committee appointed the principal executive organ of the federal government, the Council of People's Commissars of the U.S.S.R., whose functions will be discussed in connection with the Constitution of 1936. Each constituent republic had its own constitution duplicating on a small scale the administrative machinery of the federal government. It must be noted that the administrative structure of the Soviet Union has been subjected to an almost uninterrupted remodelling, a condition that is not only distressing to the student but must also add greatly to the difficulties of the planning bodies.

Basic Principles of the Constitution of 1936

Drafting of the Constitution of 1936. The decision of the government to endow the country with a new Constitution was announced at the seventh congress of the Soviets in February, 1935, and when the draft of this Constitution was published and submitted to the public in June, 1936, it became practically a duty to join in the discussion. According to Miss Strong 527,000 meetings were held for this purpose and were attended by 36.5 million people. One hundred and fifty-four amendments were suggested, but only 43 changes were made, practically all of them in phraseology.[1] The eighth congress of the Soviets after a ten-

[1] The only amendment of some formal significance was the substitution of direct for indirect elections in choosing the Council of Nationalities. *The New Soviet Constitution* by Anna Louise Strong (Henry Holt and Company, New York, 1937), gives a good translation of the text of the Constitution and a useful sum-

day discussion unanimously adopted the text of the Constitution on December 5, 1936, which was proclaimed a national holiday.

Basic Principles of the New Society. Chapter I of the Constitution outlines the basic features of the new society. It defines the U.S.S.R. as "a Socialist State of workers and peasants" (Article 1). The political foundation of the Union "consists of Soviets of working people's deputies, which grew up and became strong as a result of the overthrow of the power of the landlords and capitalists and the winning of the dictatorship of the proletariat" (Article 2). All political power "belongs to the working people of town and country" as represented by the Soviets (Article 3). The economic foundation of the Union "consists of the socialist economic system and the socialist ownership of the tools and means of production" achieved through the liquidation of capitalism and the "abolition of exploitation of man by man" (Article 4). "Socialist property" takes the form of either State property or "co-operative collective property" (Article 5). All land, natural resources, waters, forests, industrial enterprises, means of transportation, and "the basic housing facilities in cities and industrial localities are State property, that is the wealth of the whole people" (Article 6). Articles 7 and 8 deal with collective farms and will be discussed in Chapter VI.[1] Article 9 authorizes "small-scale private enterprise of individual peasants and handicraftsmen based on their personal labor, provided there is no exploitation of the labor of others." Private property is recognized but is kept within narrow limits. "The right of personal property of citizens in their income from work and in their savings, in their dwelling houses and auxiliary husbandry, in household articles and utensils, and in articles for personal use and comfort, as well as the right of inheritance of personal property of citizens, is protected by law" (Article 10). The two closing articles of Chapter I are the most characteristic. Article 11 declares that "the economic life of the U.S.S.R. is determined and directed by a State plan of national economy" and sets out the three objects of planning: increase in public wealth, steady improvement in the material and cultural standards of the working people, and the strengthening of the independence of the U.S.S.R. and its capacity for defense. Article 12 states that "Work in the U.S.S.R. is a duty and a matter of honor for every able-bodied citizen, on the principle:

mary of the principal changes it introduced. Unfortunately the author's comments are entirely uncritical. All quotations from the Constitution in the text are given in Miss Strong's translation.

[1] See below, pp. 901-902, 906.

'He who does not work, shall not eat.' In the U.S.S.R. the principle of socialism is realized: 'From each according to his ability, to each according to his work.' " The latter dictum gives official sanction to a system of wage payment that has been in operation in the Soviet Union for a number of years and is a fundamental feature of the Russian planned economy.

Soviet Federalism

The Constituent Republics and the Powers of the Federal Government. Under the new Constitution the U.S.S.R. remains, as in the past, "a federal State, formed on the basis of voluntary union" by 11 (now 12) Soviet socialist (constituent) republics. This number is arrived at by adding to the 7 constituent republics mentioned above [1] the newly formed republics of Kazakh and Kirghiz and by splitting the former republic of Transcaucasia, which has ceased to exist, into 3 republics: Armenia, Georgia, and the Azerbaidzhan.[2] The powers reserved for the federal government are remarkably broad (Article 14). They comprise: conduct of foreign relations, including questions of war and peace; admission of new republics to the Union; enforcement of the federal constitution and insurance of the conformity of the constitutions of the constituent republic with the federal Constitution; confirmation of changes of boundaries between the constituent republics and of the formation of new territories, provinces, and autonomous republics within the constituent republics; organization of national defense and domestic security, that is, of the police; administration of the monopoly of foreign trade; establishment of the economic plan for the Union; confirmation of the federal budget and those taxes and revenues which are apportioned between the federal, republican, and local budgets; administration of banks and industrial, agricultural, and commercial enterprises of All-Union significance; administration of transport and communications; control of money, credit, and insurance; issue of State loans; determination of the fundamental principles for the use of land and the exploitation of national resources; determination of the fundamental principles in the field of education and public health; organiza-

[1] See above, p. 838.

[2] A joint session of the two houses of the Supreme Soviet passed on March 31, 1940, a law which amended the Constitution by creating the Karelian-Finnish Soviet socialist republic. The new republic comprises most of the former Karelian autonomous republic (a subdivision of the RSFSR) and the territories ceded by Finland to Russia under the treaty of March 12, 1940. The number of constituent republics is thus increased to 12.

tion of a single system of economic accounting;[1] determination of the principles of labor legislation; legislation concerning the organization of the judiciary and the preparation of civil and criminal codes; legislation concerning the right of citizenship and the position of foreigners; the right of amnesty.

It will be clear from the enumeration above that the powers of the federal government are as broad as they are ill-defined, especially if it is borne in mind that the economic plan, the determination of which is a function of the federal authorities, comprises practically every aspect of the country's life and offers unlimited opportunities for interference with the organs of local government. The provision of Article 14, therefore, that "outside these limits (those stated above) each constituent republic shall exercise State powers independently" would seem to mean very little in practice except that it safeguards the right to "cultural autonomy" and to the use of local languages, a no doubt meritorious departure from the policy of "Russification" pursued by the Imperial government. "The right freely to secede from the U.S.S.R." granted to the constituent republics by Article 17 is also of questionable practical significance. This provision must be interpreted in the light of Stalin's remarks on the right to secede quoted above.[2] During the purge of 1937-1938 there were several references in the press to men who were accused of plotting to bring about the secession of some territory from the Union. Such activities have invariably been interpreted by the Soviet courts as treasonable and counter-revolutionary. It is therefore perfectly clear that the exercise of the right of secession is effectively prevented by the structure of the Soviet State and the communist doctrine that governs it.

The Smaller Territorial Subdivisions. According to the Constitution, which provided for the subdivision of the constituent republics into smaller territorial units, the Russian Soviet Federated Socialist Republic was to consist of 5 territories, 19 provinces, 18 autonomous Soviet socialist republics, and 6 autonomous provinces. The Ukrainian, Azerbaidzhan, Georgian, Uzbek, Tadzhik, and Kazakh republics had a smaller number of subdivisions, while the constituent republics of Armenia, White Russia, Turkmen, and Kirghiz had none at all.[3] This

[1] See below, pp. 883-884, 887.

[2] See above, p. 819.

[3] The complete list of the principal administrative subdivisions is given in the Constitution, Articles 22-29. These articles were revised by a constitutional amendment adopted by the Supreme Soviet on May 31, 1939.

administrative scheme is no longer valid. According to a recent and by no means unsympathetic observer "in no other country have there been so many and so extensive changes in internal boundaries. A map showing the administrative regions of the country is likely to be out of date as soon as it is published." The reason given for the inclusion of the list of administrative subdivisions in the Constitution was to give it "certainty, stability, clarity." [1] Nevertheless the redrafting of the administrative map of the Union continued on an unprecedented scale in 1937, 1938, and 1939. Mr. Morrison ascribes the frequent changes, perhaps not very convincingly, to the "requirements of a dynamic economy."

Predominant Position of the RSFSR. Legally the 12 constituent republics enjoy exactly the same status. The RSFSR, however, is by far the most important member of the unequal partnership. The size of its territory and population, its economic resources, its cultural tradition, and its predominance in the Communist Party (even though Stalin is a Georgian), create for it a position that cannot be challenged by the tiny Caucasian and Asiatic republics brought into existence by the whims of Moscow. The RSFSR therefore completely dominates the life of the Union. The resulting situation is not entirely incompatible with communist doctrine since the program of the Party definitely provides that the federation of Soviet republics is merely the "transition stage toward complete unity."

Structure of the Federal Government

The Supreme Soviet of the U.S.S.R. The new Constitution has retained the Soviet administrative structure that existed before 1936 but has submitted it to important modifications. The highest organ of the Union is the Supreme Soviet of the U.S.S.R. which exercises all the powers vested in the federal government by Article 14 [2] except those delegated by the Constitution to other organs of the federal government. The legislative power belongs exclusively to the Supreme Soviet of the U.S.S.R., which is elected for four years and consists of two chambers: the Council (Soviet) of the Union and the Council (Soviet) of Nationalities.

[1] J. A. Morrison, "The Evolution of the Territorial-Administrative System of the U.S.S.R.," in *The American Quarterly on the Soviet Union*, October, 1938, pp. 25, 38. A Decree of the Central Executive Committee and of the Council of People's Commissars of April 28, 1936, specifically prohibited changes in the inner boundaries from September 1, 1936, to January 15, 1937, as a measure preliminary to the abortive census of January 6, 1937.

[2] See above, p. 842.

The Council of the Union is elected by the citizens of the Union by territorial districts on the basis of one deputy for every 300,000 of the population. The Council of Nationalities is elected by the citizens of the Union by constituent and autonomous republics, autonomous provinces and national regions (*okrug*) on the basis of 25 deputies from each constituent republic, 11 deputies from each autonomous republic, 5 deputies from each autonomous province, and 1 deputy from each national region. The Council of the Union and the Council of Nationalities enjoy equal rights, and elect each a president and two vice-presidents. Every bill before it becomes law must be approved by both chambers by a simple majority. The Supreme Soviet, sitting as a body, elects its Presidium consisting of a chairman, 11 vice-chairmen, and 24 members. The Presidium has important duties (Article 49). It convenes twice a year the sessions of the Supreme Soviet; interprets the existing laws and issues decrees; dissolves the Supreme Soviet, in case of the failure of the two chambers to agree, and arranges for new elections; holds referendums on its own initiative or on that of one of the constituent republics; revokes the decisions and orders of the Councils of People's Commissars of the Union and of the constituent republics if they violate the law; in the intervals between the sessions of the Supreme Soviet removes from office and appoints People's Commissars of the U.S.S.R., subject to subsequent confirmation by the Supreme Soviet; bestows decorations and honorary titles; exercises the right of pardon; appoints and dismisses the high command of the armed forces; in the intervals between the sessions of the Supreme Soviet has the power to declare a state of war and at all times to order mobilization, to ratify and to denounce international treaties,[1] to appoint and recall ambassadors, and to receive the credentials and letters of recall of foreign representatives.

Immunity of the Deputies and New Elections. The deputies of the Supreme Soviet are free from arrest without the consent of that body or, if the Supreme Soviet is not in session, without the consent of the Presidium. The Presidium continues in office after the expiration of the term of the Supreme Soviet until the election of the new Presidium. New elections must take place within two months after dissolution and the Supreme Soviet must be convened within a month after the elections.

The Council of the People's Commissars of the U.S.S.R. The Supreme Soviet, in a joint session of its two chambers, appoints

[1] Law of August 20, 1938.

the Council of People's Commissars of the U.S.S.R., the highest executive and administrative organ of the Union. This Council, which is responsible to the Supreme Soviet or to its Presidium when the Supreme Soviet is not in session, issues decrees that are based on the existing law and are binding throughout the Union. The powers conferred upon the Council of People's Commissars of the U.S.S.R. by Article 68 are very broad. They comprise: direction and co-ordination of the work of the federal departments; execution of the State budget and of the national economic plan and the administration of the monetary and credit system; maintenance of public order and the defense of the interests of the State and those of the citizens; organization of the armed forces; creation of commissions and other administrative organs to deal with economic, cultural, and military matters. The Council of People's Commissars of the U.S.S.R. may suspend the orders of the executive agencies of the constituent republics if such orders violate federal laws or decrees. The Council of the People's Commissars of the U.S.S.R. consists of a Chairman, a Vice-Chairman, the People's Commissars of the U.S.S.R., the Chairman of the State Planning Commission, and several other high officials,[1] but its composition has been somewhat altered since the adoption of the Constitution.

The People's Commissars of the U.S.S.R. The People's Commissars of the U.S.S.R., who are the heads of the federal departments, the People's Commissariats of the U.S.S.R., have the power to issue orders and decrees dealing with matters within the jurisdiction of their respective departments, provided that such orders are based on law or on the decrees of the Council of People's Commissars of the U.S.S.R. They must answer within three days interpellations addressed to them by the members of the Supreme Soviet.

Two Kinds of People's Commissariats of the U.S.S.R. There are two kinds of People's Commissariats of the U.S.S.R.: (1) the All-Union People's Commissariats, which operate throughout the entire territory of the Union either directly or through organs they appoint; and (2) the Union-Republic People's Commissariats which as a rule act through corresponding People's Commissariats of the constituent republics. The distinction between the two groups of People's Commissariats of the U.S.S.R. would seem to

[1] Chairman of the Commission of Soviet Control, Chairman of the Committee on Arts, Chairman of the Committee on Higher Education, Chairman of the Administration of the State Bank.

be that those in group one are concerned with what are regarded as purely federal matters, while those in group two deal with questions assigned to the joint jurisdiction of the federal government and the governments of the constituent republics.

The All-Union People's Commissariats. The Constitution provides for the following All-Union People's Commissariats: Defense, Foreign Affairs, Foreign Trade, Railways, Communications, Water Transport, Heavy Industry, Defense Industry. Three more All-Union People's Commissariats were added in 1937: the People's Commissariat for the Purchasing of Agricultural Products, formerly a committee under the Council of People's Commissars; the Commissariat of Machine-Building, formerly a part of the Commissariat of Heavy Industry; and the Commissariat of the Navy, formerly a part of the Commissariat of Defense.[1]

The Union-Republic People's Commissariats. The Union-Republic People's Commissariats provided for by the Constitution are as follows: Food Industry, Light Industry, Timber Industry, Agriculture, State Grain and Livestock Farms, Finance, Internal Trade, Interior, Justice, and Health.[2] The Commissariat of Internal Trade, which has been renamed People's Commissariat of Trade, has been thoroughly reorganized. In addition to the Commissariats the Council of People's Commissars has under its jurisdiction innumerable committees and other organs, some

[1] In 1939 the structure of the federal government has been remodelled on the basis of greater specialization. On January 11, 1939, the Commissariat of Defense Industry was split into four separate People's Commissariats: Aviation, Industry, Shipbuilding, Munitions, and Armaments. On January 24, 1939, the Commissariat of Heavy Industry was reorganized as six People's Commissariats: Fuel Industry, Power Stations and Electric Industry, Ferrous Metallurgy, Non-Ferrous Metallurgy, Chemical Industry, and Building Materials. Early in February the Commissariat of Machine-Building was divided into the People's Commissariats of "Heavy" Machine-Building, "Medium" Machine-Building, and "General" Machine-Building. On March 13, 1939, the All-Union People's Commissariat of Building Materials became the Union-Republic People's Commissariat of Building Materials. In April the People's Commissariat of Water Transport was reorganized as two People's Commissariats: Merchant Marine, and River Fleet. On May 29, 1939, the People's Commissariat of Construction was created. These changes were incorporated in Article 77 of the Constitution by virtue of an amendment adopted by the Supreme Soviet of May 31, 1939. But the process of administrative reconstruction continued. On October 12, 1939, the Commissariat of Fuel Industry established only eight months earlier was split into two People's Commissariats: Coal Industry, and Oil Industry.

[2] On January 2, 1939, the textile industry, formerly under the People's Commissariat of Light Industry, was put under a separate People's Commissariat. On January 19, 1939, the Commissariat of Food Industry was divided into the People's Commissariats of Fish Industry, Meat and Dairy Products Industry, and Food Industry. On March 13, 1939, the All-Union People's Commissariat of Building Materials which was established on January 24 of the same year became a Union-Republic People's Commissariat. These changes were incorporated in Article 78 of the Constitution by virtue of an amendment adopted by the Supreme Soviet on May 31, 1939.

of which, for instance the Economic Council, issue an uninterrupted stream of decrees. The entire administrative structure, moreover, is subject to an unceasing process of remodelling which makes a diagram of the Soviet Government as apt to be out-of-date and often misleading as is a map of the territorial-administrative subdivision of the Union.

Republican and Local Government

The Government of Constituent Republics. The structure of the government of the constituent republics duplicates that of the federal government. Article 16 of the Constitution definitely provides that the constitutions of the constituent republics, while taking into account local peculiarities, shall be drawn up "in full conformity with the Constitution of the U.S.S.R." The highest legislative body in a constituent republic is its Supreme Soviet elected by the citizens of the republic for four years. Under the republican constitutions adopted in 1937 the Supreme Soviet is a unicameral body. It elects its Presidium and appoints the Council of People's Commissars which is the highest executive organ of the constituent republic. Those of the People's Commissariats of the constituent republics, which correspond to the Union-Republic People's Commissariats of the U.S.S.R.,[1] are subordinate to both these federal departments and to the Council of People's Commissars of the constituent republic. Each constituent republic has four additional People's Commissariats—Education, Local Industry, Municipal Economy, and Social Welfare—which are subordinate to the Council of People's Commissars of the constituent republic.[2] Within the framework of the federal Constitution the Supreme Soviet, the Presidium, the Council of People's Commissars and the People's Commissars of each constituent republic enjoy powers similar to those of the corresponding federal organs. It will be remembered that the limitations imposed by the federal Constitution upon local autonomy are many and far-reaching. Again, like the federal government, the governments of the constituent republics exercise a high degree of control over the activities of the smaller territorial subdivisions under their respective jurisdictions: autonomous Soviet socialist republics, territories (*krai*), provinces (*oblast*), autonomous provinces, regions (*okrug*), and counties (*rayon*).

[1] See above, pp. 846-847.

[2] The organization of the republican People's Commissariats of Automobile Transport was announced in the *Izvestia* of June 3, 1939.

The Government of Autonomous Soviet Socialist Republics. Each autonomous Soviet socialist republic (there were 22 on October 1, 1938) [1] has a constitution, a Supreme Soviet elected for four years, a Presidium, and a Council of People's Commissars. The powers vested in the governments of the autonomous republics are similar to those of the governments of the constituent republics, but their sphere of action is further restricted.

The Government of the Smaller Territorial Subdivisions. The administration of the territories, provinces, autonomous provinces, regions, counties, cities, and rural localities is carried on by a Soviet of working people's deputies elected by the population of the respective subdivisions for a term of two years.[2] The Soviets maintain public order, ensure the observance of the law and the protection of the rights of the citizens, direct local cultural and economic activities and supervise local finance. Each Soviet elects an executive committee. The Soviets have power to issue orders dealing with matters within their jurisdiction as defined by the federal and republican constitutions.

The Judiciary

Law on the Judiciary, 1938. The structure of the judiciary, which was determined until recently by a federal law of 1924 and by republican legislation based thereon, has been considerably altered by the new Constitution and by the "Law on the Judiciary of the U.S.S.R., the Constituent Republics, and the Autonomous Republics" approved by the Supreme Soviet of the U.S.S.R. in August, 1938. The administration of justice is carried on by the law courts in co-operation with the legal officers of the State.

Legal Officers of the State. According to the Constitution, the chief legal officer of the Soviet government is the Attorney General of the U.S.S.R. who is appointed by the Supreme Soviet of the U.S.S.R. for a term of seven years. His chief function consists in enforcing the observance of the law by administrative departments and citizens alike. He appoints for a term of five years the State attorneys of the republics, territories, and provinces; the State attorneys in turn appoint for a term of five years

[1] Seventeen of the 22 autonomous Soviet socialist republics were comprised within the territory of the RSFSR.

[2] On October 1, 1938, there were in the Soviet Union 74 territories and provinces, 9 autonomous provinces, 30 regions (11 of them were classified as "national" and 19 as "administrative"), 3,464 counties, and 808 cities and towns. In 1934 the number of counties was 2,443 and that of the cities and towns 743.

the district attorneys of the regions, districts, and cities, subject to confirmation by the Attorney-General of the U.S.S.R.

Basic Principles of the Law of August, 1938; Judges and Assessors. The structure of the Law Courts provided by the Constitution and by the Law of August, 1938, embodies certain general principles. These principles are the equality of all citizens before the law; the uniformity of the criminal and civil procedure throughout the Union; the independence of the judges who are subject only to the law; the use of local languages in the courts; the right of the defendants, except in cases specified by the law, to legal defense; the publicity of court procedure except in cases provided by the law; the elective character of the judiciary. Every court consists of judges and "people's assessors," or associate judges. Judges serve as regular members of the court during the term for which they are elected; assessors are chosen in the same manner and for the same term as the judges but serve, in turn, no more than ten days per year unless the extension of this period is necessitated by the duration of a case. The assessors receive during their term on the bench emoluments equal to those they earn in their usual employment.[1] Every citizen of the Union entitled to vote may be elected either a judge or an assessor of any court. No educational or other qualifications are required. Cases in every court are heard by a "judicial college" consisting of one judge and two assessors, except when the law provides that the "judicial college" must consist of three judges.[2] The judges and assessors may be removed only by being recalled by the bodies that elected them or by a decision of the courts. Criminal action against the judges and assessors of the lower courts may be initiated only by the district attorney with the sanction of the Presidium of the constituent republics; criminal action against the judges and assessors of the Supreme Court of the U.S.S.R. and of the three "special" courts (military, railway transportation, and water transportation) may be initiated only by the Attorney-General of the U.S.S.R. with the sanction of the Presidium of the U.S.S.R.

The People's Courts. The lower courts, the so-called People's Courts, are elected for a period of three years by the

[1] The remuneration of the assessors, however, shall not be less than that of the judges. Decree of the People's Commissar for Justice of the U.S.S.R., May 9, 1939.

[2] This rule was frequently disregarded in practice and both civil and criminal cases were decided by individual judges. The practice was specifically prohibited by a decree of the People's Commissar for Justice of the U.S.S.R. ratified by the Council of People's Commissars of the U.S.S.R. on July 28, 1939.

voters of a county (*rayon*) by direct secret ballot. The candidates are nominated by the Communist Party, trade unions, co-operative societies, youth organizations, cultural organizations, as well as by workers in an industrial organization, Red Army units, collective farmers, and employees and workers of the State farms. The number of judges and assessors of the People's Courts is determined by the Council of People's Commissars of the constituent republics after consultation with the republican Commissariat of Justice. The People's Courts exercise jurisdiction over both criminal and civil cases. Their criminal jurisdiction extends to such offenses as murder, rape, assault, robbery, theft, abuse of power or neglect of duty by officials, failure to perform obligations imposed by the State, and minor offenses. The jurisdiction of the People's Courts in civil cases extends to actions involving property rights, violation of labor regulations, and so on.

The Higher Courts. Above the People's Courts are the territorial, provincial and regional courts, and the courts of the autonomous regions. The members of these courts are elected by the respective Soviets of the working people's deputies for a term of five years. Their jurisdiction as courts of first instance embraces the more serious offenses such as counter-revolutionary activities, theft of socialist property, and civil actions involving State or public institutions. The autonomous and the constituent republics have their own Supreme Courts elected by their respective Supreme Soviets for five-year terms. The presidents and judges of the three "special courts"—military, railway transportation, and water transportation—are elected for five-year terms by the Supreme Soviet of the U.S.S.R., while the assessors of these courts are elected for similar terms by the Soviets of working people's deputies of the territories and provinces and by the Supreme Soviets of the constituent and autonomous republics. The military courts deal chiefly with military offenses and the other two "special" courts with crimes involving the "breach of labor discipline and other offenses disorganizing the normal working of transportation." The Supreme Court of the U.S.S.R., the highest tribunal of the land, is elected by the Supreme Soviet of the U.S.S.R. for a term of five years.

Jurisdiction of the Higher Courts. The higher courts, that is those above the People's Courts, supervise the activities of the lower courts and perform the functions of both a court of first instance and of a court of appeal from the decisions of the lower

courts. The law does not state clearly what type of cases are tried by the Supreme Courts of the autonomous and constituent republics and of the U.S.S.R. as courts of first instance. It merely provides that they act in this capacity in cases "assigned to their jurisdiction by the law." What this vague provision means remains uncertain, especially because the most serious offenses under the Soviet law—counter-revolutionary activities and crimes against socialist property—are included in the jurisdiction of the territorial, provincial, and regional courts. Presumably the higher courts deal with those offenses included in the above categories that are considered particularly grave. When the higher courts act as courts of appeal the "judicial college" consists of only three judges, that is, the assessors are not included. The same rule applies to the Supreme Court of the U.S.S.R. when it hears appeals from the decisions of either the Supreme Courts of the constituent republics or the three "special" courts.

Composition of the Supreme Court of the U.S.S.R., 1938. The number of judges and assessors of the Supreme Courts is not defined by the Law. The Supreme Soviet of the U.S.S.R. in August, 1938, elected the Supreme Court of the Union, consisting of 45 judges and 20 assessors. The larger number of judges, as compared with that of the assessors, would seem to suggest that the Supreme Court of the U.S.S.R. is designed to serve primarily as a court of appeal.

Purpose of the Judiciary Defined. The general purpose of the Soviet courts, as defined by the Law of August, 1938, is "to educate the citizens of the U.S.S.R. in a spirit of devotion to the fatherland (*rodina*) and to the cause of socialism, in the spirit of an exact and unfaltering performance of Soviet laws, careful attitude toward socialist property, labor discipline, honest fulfilment of State and public duties, respect toward the rules of the socialist commonwealth." N. Rychkov, Commissar for Justice, admitted in his speech before the Supreme Soviets in August, 1938, that the administration of justice in the Soviet Union was suffering from grievous imperfections, but he expressed his deep conviction that these defects would be overcome because, he said, "we are led by our great Communist Party, its Central Committee, and our wise, great, our own (*rodnoi*) and beloved Comrade Stalin." [1]

[1] Among the measures taken by his department for the improvement of the standards of the judiciary Rychkov mentioned the establishment of six-months' courses for the training of judges for the People's Courts. A six-months' legal training appears hardly adequate for jurists who have to deal with offenses as grave as robbery and murder.

Franchise and Elections

Universal Suffrage and Direct Secret Ballot. A seemingly revolutionary change in the political life of the Soviet Union was introduced by the provisions dealing with the electoral system in the Constitution of 1936. Disfranchisement of specified groups of citizens as well as indirect elections were discarded. Every citizen who has reached the age of 18, irrespective of sex, race, nationality, religion, educational qualifications, residence, social origin, property status, and previous activities, is now entitled to vote, except the insane or those disfranchised in consequence of a sentence imposed by the courts. Article 134 provides that the election of deputies to every assembly described above "shall be effected by the voters on the basis of universal, equal, and direct suffrage, by secret ballot." Men serving in the army are entitled to vote and may be elected to office. Candidates for election are nominated by electoral districts by one of the following bodies: social organizations of workers, the Communist Party, trade unions, co-operative societies, organizations of young people, cultural societies.

The Soviet Bill of Rights

Rights of Soviet Citizens. The Soviet Bill of Rights embodied in Articles 118-133 of the federal Constitution presents a peculiar mixture of communist ideas with principles borrowed from similar documents of the bourgeois democracies and from those of the fascist countries. According to the Constitution every Soviet citizen enjoys "the right to work," a right safeguarded by "the socialist organization of the national economy, the steady growth of the productive forces of society, the elimination of the possibility of economic crisis, and the abolition of unemployment." Every citizen is granted "the right to rest," opportunities for which are offered by the seven-hour day ("for the overwhelming majority of the workers"),[1] annual vacation with pay, and facilities for recreation such as clubs, rest-homes, and sanatoria. "The right to material security" in case of disability and old age is safeguarded by the development of social insurance; "the right to education" by universal compulsory elementary education, by free higher education (students being entitled to maintenance from the government) and by the organization of professional training in factories and on collective farms. There is complete

[1] "Workers" is used in the Constitution with reference to industrial workers.

equality of all citizens irrespective of their sex, race, and nationality. Article 124 provides for the freedom of conscience, the separation of the Church from the State, and the freedom of both religious worship and anti-religious propaganda. In practice, however, no teaching of religion is permitted in Soviet schools or to young people outside the schools, while anti-religious propaganda is carried on with the support of the State. The Soviet citizens are also granted freedom of speech, of the press, assembly and meetings, and they are permitted to organize street processions and demonstrations. These liberties must be exercised "in the interest of the working people and in order to strengthen the socialist system." The government puts "at the disposal of the working people and their organizations printing shops, supplies of paper, public buildings, the streets, means of communication, and other material requisites for the exercise of these rights." It seems clear that if the government refuses to put "at the disposal" of the citizens the "material requisites" the civic rights cannot be exercised.

Leading Position of the Communist Party. Article 126 enumerates the organizations that may be set up by the citizens: "trade unions, co-operative associations, youth organizations, cultural, technical, and scientific societies." The same article specifically provides that "the most active and politically conscious citizens . . . unite in the All-Union Communist Party . . . which is the vanguard of the working people . . . and represents the leading nucleus of all organizations of the working people, both social and State." This provision is the mainspring of the political system of the Soviet Union. The inviolability of the person and homes of the citizens is protected, according to the Constitution, by the rule that no arrest may take place except by order of the judicial authorities.

Duties of Soviet Citizens. The duties of the Soviet citizens consist in observing the Constitution, maintaining labor discipline, honestly performing their public obligations, and safeguarding "socialist public property as the sacred inviolable foundation of the Soviet system." Military service is an "honorable duty" and any treasonable activities are punishable "with the full severity of the law."

Right of Asylum. Article 129 grants the right of asylum to "foreign citizens persecuted for defending the interest of the working people or for scientific activity or for their struggle for national liberation." The interpretation of this provision has

been so far somewhat restricted. Moscow is, indeed, the haven of notable revolutionaries, but the Soviet Government has manifested no desire to open its frontiers to the hundreds of thousands of victims of racial persecutions in Central and Eastern Europe, or to the refugees from Spain, in spite of the fact that it controls vast and sparsely populated areas and is avowedly short of skilled labor.

Soviet Democracy in Action

Constitution of 1936 Compared with its Predecessors. It will appear from what has been said above that the Constitution of 1936 introduced some striking changes in the governmental structure of the Soviet Union. In contrast with its predecessors the present government of the Union is based on the principle of the separation of powers, the legislative powers being vested exclusively in the Supreme Soviet; the executive, in the Council of People's Commissars, and the judicial, in the Supreme Court and the Attorney General who enjoys, by law, a degree of independence from the executive unknown to the earlier constitutions. The new electoral system displays the familiar features of bourgeois democracies—universal, equal and direct suffrage, and the secret ballot. No wonder that the new Constitution was acclaimed by many observers as a definite proof that the Soviet Union has been converted to the principles of democratic government, as it is understood in the United States and in Western democratic countries.

Stalin on Proletarian Dictatorship. That Stalin, however, took a different view should not be disregarded, especially since the new Constitution is usually referred to in the U.S.S.R. as "Stalin's Constitution." Addressing on November 25, 1936, the eighth congress of the Soviets which adopted the text of the Constitution, Stalin declared: "I must admit that the draft of the new Constitution actually leaves in force the regime of the dictatorship of the working class as well as it preserves unchanged the present leading position of the Communist Party." The question naturally arises in the mind of the student: how is it possible to reconcile two seemingly irreconcilable systems—democracy based on universal suffrage and the secret ballot with the dictatorship of the working class exercised through the numerically insignificant Communist Party? The best way to solve the puzzle is by examining the machinery of Soviet elections and by glancing at the procedure in the new Soviet parliament.

Elections of 1937 and 1938. Two elections to the higher assemblies have been held under the new Constitution: the election to the Supreme Soviet of the U.S.S.R. in December, 1937, and the election to the Supreme Soviets of the constituent and of the autonomous republics in June, 1938. The federal election was preceded by an "Appeal" of the Central Committee of the Communist Party for a demonstration of national unity and the candidates ran on the platform of "an election bloc of Party and non-Party people." A similar device was used in the elections of June. Since the "non-Party people" have no organizations of their own that would not be controlled by the "leading nucleus" of the Communist Party it may be surmised that the "bloc" was a somewhat one-sided affair. While under these conditions the victory of the Communist Party was generally believed to be a foregone conclusion it was expected by many that there would be a keen contest among several candidates. Stalin, in an interview with Roy Howard in March, 1936, confidently predicted an intense electoral struggle over the personal merits of the candidates. Events, however, belied these expectations. In both elections only one candidate was submitted to the voters in each electoral district, although several candidates had been nominated by various organizations during the preliminary discussion. An observer by no means unfriendly to the Soviet Union, Miss Rose Somerville, who spent most of the years 1935-1937 in Russia studying its governmental structure, rightly remarks that to bring about the withdrawal in each district of all the candidates but one "some machinery must have been in operation which is not revealed by the public record." Miss Somerville is undoubtedly right when she ventures the opinion that "some influence, probably the Communist Party, made the several nominees aware of the desirability of avoiding public contest," although she is probably wrong in believing that this influence was at work in some electoral districts only.[1] In both elections the nomination of candidates was by the showing of hands, the secret ballot being used only in the final voting. The "non-Party people" being officially in a "bloc" with the Communists, candidates opposing the one sponsored by the local communist organization were effectively excluded, for any such opposition would have indicated that its sponsors were neither Communists nor "non-Party"; that is, that they were inimical to the Soviet regime, a position in which no

[1] Rose Somerville, "The New Soviet Elections," in *The American Quarterly of the Soviet Union*, October, 1938, pp. 71-72.

sane person would dream of putting himself under the dictatorship of the proletariat.

Their Results. It was not stipulated that the candidates should be residents of the districts where they came up for election. No registration of voters was required, the list being prepared by the local Soviets. The voters were strongly urged to take part in the elections and the authorities kept a check of those who did and those who did not vote. The election day was a kind of national holiday, the voters trooping in to deposit a secret ballot on which they had registered their approval or disapproval of the sole candidate. Of the 94 million voters in the federal election over 91 million, or 96.8 per cent, went to the polls and of this number 89.8 million, or 98.6 per cent voted for the candidates. This record was further improved in certain republics in the elections of June, 1938, the percentage of both the voters participating in the election and those endorsing the official candidates running as high as 99 per cent. Of the total membership of 569 in the Council of the Union of the U.S.S.R. 81 per cent are members of candidates of the Communist Party, and of the total membership of 574 in the Council of Nationalities 71 per cent are drawn from the ranks of the Party. The balance is made up of people who are euphemistically described as "non-Party Bolsheviks." The composition of the republican Supreme Council does not differ substantially from that of the Supreme Soviet of the U.S.S.R. The result of the elections was officially acclaimed in Russia as a great victory. The record of "Stalin's elections" would, however, have been more impressive if the world had not grown accustomed to similar "triumphs" obtained by like methods in the popular consultations held in Fascist Italy and National-Socialist Germany.

Elections of 1939. Elections to the local Soviets were held in December, 1939, according to the now familiar pattern. Each district had again only one candidate, sponsored by the "bloc of Party and non-Party Stalinites." Of the total number of 93.5 million voters 92.8 million went to the polls. The percentage of votes cast for the sole candidate varied from 99.7 to 96.7 of the total vote. Of the 1,281,000 delegates to 68,190 Soviets of various types elected on this occasion 34.4 per cent were members or candidates of the Communist Party and 68.6 per cent were "non-Party Stalinites." The only novel feature in the 1939 elections was the failure to elect Soviets in 134 localities. In nine cases this was due to the death of the candidates or to inclement weather

conditions, and in the remaining 125, according to an official but not very enlightening statement, "the candidates did not receive an absolute majority of votes." The elections, which were held in the midst of the Soviet-Finnish war, were enthusiastically described in the Soviet press as another magnificent tribute to Stalin.

Unanimity of Opinion in the Supreme Soviet. The members of the Supreme Council of the U.S.S.R. in the sessions held in 1938-1939 displayed a unanimity of opinion even surpassing that of the electorate. At the opening session of the new parliament a picturesque group of visiting Kazakhs from Central Asia added color to the proceedings not only by their cerise floating robes but also by the enthusiastic thrusting up of their hands whenever a vote on any question was taken.[1] No one seems to have interfered with them since the votes were unanimous. From the unwritten rule of unanimity the Soviet parliament has never departed.

Protection of the Regime

The GPU and the People's Commissariat of the Interior. The Soviet Government does not rely entirely on the good offices of the Communist Party to keep everyone in line. The dreaded G.P.U., or State secret police department, has for years exercised unlimited powers over the life and death of the Soviet citizens. Its ubiquitous agents, exempted from the necessity of complying with the formalities of legal procedure, are vested with extra-judicial authority which permits them not only to send those whom they suspect to the penal camps that dot the bleak wilderness of Russia's northern regions, but also to impose death sentences without the formality of a trial. The subordination of the G.P.U. in 1934 to the newly-created People's Commissariat of the Interior does not seem to have curtailed in any way the powers of the secret police. The trial in 1938 of the former head of this institution, Henry G. Yagoda, disclosed an almost incredible picture of crime, abuse, and personal rule. There is no evidence, however, that the execution of Yagoda and the purge of his department has changed the methods of the secret police, which continues to be the most powerful and dreaded administrative institution in the Soviet Union. Introducing the new Law on the judiciary the Commissar for Justice, Rychkov, reminded the Supreme Council of the U.S.S.R. in August, 1938, that the defense of the Soviet Union against its enemies is carried on by other

[1] Harold Denny in the *New York Times*, January 14, 1938.

agencies in addition to the law courts. "The honorable and glorious duties are gallantly performed by the agencies of our Ministry of the Interior [the secret police] under the leadership of the Stalinite Commissar Comrade Ezhov," Rychkov declared amid the thunderous applause with which Soviet democracy never fails to greet every reference to the secret police. Ezhov was removed in December, 1938, but the police department remained.

Counter-Revolutionary Activities. The extra-judicial powers of the secret police are supplemented by a formidable array of Criminal Code provisions dealing with counter-revolutionary and anti-State activities. No other part of the Criminal Code, adopted in 1927, has been so thoroughly amended and revised as that devoted to the protection of the regime. A counter-revolutionary activity is defined as any action directed to "the overthrow, undermining, or weakening" of the U.S.S.R. and its constituent parts, or of its "basic economic, political, or national institutions" (Article 58 [1], edition 1937). In addition to such criminal activities as treason, armed uprising and others punishable under the law of any country, the Soviet Code considers as counter-revolutionary the "undermining of State industry, transportation, commerce, monetary circulation and credit, as well as co-operative societies" (Article 58 [7]). The intentional non-fulfilment by a person of his "definite duties" or negligence in fulfilling them, with the intent of weakening the Soviet power or disorganizing the State machinery, belongs to the same class of criminal offenses (Article 58 [14]). The penalty varies from imprisonment to execution by a firing squad and confiscation of all property.

Crimes against the Administrative Order. The Code also recognizes a special class of crimes against "the administrative order." These are defined as "any action which, while not aimed at the overthrow of the Soviet Government . . . leads nevertheless to the disorganization of the regular functioning of the organs of the Government and interference with their work, violation of the law, or *other activities which weaken the power and authority* of the State" (Article 59 [1]). It is obviously impossible to reconcile such legislation with the doctrine of the "withering away" of the State as expounded by Lenin. The loose wording of the provisions just quoted and of many others is susceptible of the widest interpretation. The articles of the Criminal Code have frequently been invoked when the economic and administrative institutions have failed to work properly.

The Soviet Citizens' Primary Duty. The detection of anti-Soviet activities is one of the primary duties of every Soviet citizen. It has been reported that a twelve-year old boy, Pavel Morozov, who in 1932 denounced his father for siding with the opponents of the collectivization of farming, was eventually murdered by the irate parent and his associates. This gruesome piece of family history, according to an announcement in the *Pioneer Pravda,* will be commemorated by the erection of a statue to young Morozov in the Red Square in Moscow.[1] The memorial will serve as a reminder to Soviet citizens, both young and old, that their primary allegiance is to the communist ideal as interpreted by the Party.

Summary. While the Soviet Government attaches the greatest importance to persuasion and propaganda it has certainly not discarded stronger methods. These it forcibly applies to those who have been slow in perceiving the benefits of the socialist rule and are suspected of opposing it.

[1] Quoted by Harold Denny in the *New York Times,* November 15, 1938.

CHAPTER V. ECONOMIC PLANNING

Planning vs. "Anarchy of Production"

Anarchy of Production. "Anarchy of production," according to the Marxian analysis, is inevitable in an economic and political organization based on the private ownership of the means of production. The striving of the capitalists for higher profits leads them into cut-throat competition with its accompanying evils of periodical over-expansion followed by violent economic depression which throws millions of people out of work, ruins the smaller capitalists and forces them into the ranks of the proletariat. This sinister rhythm of capitalistic development, the Marxian Socialists maintain, becomes more pronounced with the growth of the capitalist society, the depressions are more frequent and severe, while the misery they inflict upon the working class is continuously intensified. Finally the economic crises, by paving the way to the socialist revolution, spell the doom of the capitalism that generated them.

Economic Planning a Necessity under Socialism. The socialist and, later, the communist society must be free from the violent economic fluctuations which, admittedly, are the curse of an economic organization resting on private ownership and private initiative. The cure consists in a comprehensive economic plan prepared by an enlightened body of experts and statesmen possessed of a real knowledge of the country's resources and requirements, a plan that will map out the course of the nation for a more or less protracted period. The necessity of such a plan in a socialist society is almost self-evident. Under capitalism the economic life is regulated more or less automatically, although no doubt imperfectly, by the relatively free interplay of complex economic forces, the interaction of supply and demand made possible by the mechanics of competition and prices, and the movement (not without considerable friction) of capital and labor from one branch of production into another. In a socialist economy private competition is non-existent. The State is the sole

producer and distributor of commodities (with but few exceptions), it determines the volume of production of every kind of goods and the prices to be charged for them. Capital, of course, cannot be moved by private initiative from one branch of production to another for the obvious reason that all economic activities are financed by the State and there is no private ownership of the means of production. Having thus eliminated the mechanics of capitalist economy the socialist State must put something in its place. The solution offered by the Soviet Union—and there seems to be no other—is economic planning. The necessity of such planning was recognized by the Bolshevik leaders from the very beginning of their rule. The program of the Russian Communist Party, adopted in March, 1919, definitely proclaimed that one of the most pressing problems of the day was "the maximum unification of all economic activities of the country in a comprehensive State plan." It was, however, almost ten years before planned economy was actually put into operation. War Communism, with its rigid centralization and the drastic attempt by the State to control every phase of the economic life was, in a sense, a venture into planned economy although it concerned itself merely with immediate and pressing needs. These economic measures were taken, moreover, under the most unfavorable economic and political conditions and were abandoned early in 1921. The New Economic Policy with the relative freedom it offered the peasant-farmers and the small traders and artisans was lacking in some of the essentials of a socialist economy. It was only with the official inauguration of the first Five Year Plan in October, 1928, that the Soviet Union definitely entered the stage of economic planning.

Prerequisites of Planning and Its Objectives. The Soviet economists claim, it would seem on good ground, that there are certain prerequisites essential to the success of any economic plan. The first of these is the nationalization of all means of production and the elimination of all private interests since such interests are inherently inimical to the smooth working of the mechanism of planning. No less essential is the second condition —unified leadership, which in the Soviet Union is provided by the Communist Party. The Soviet plan, however, is not merely a technical device for the administration of economic activities. It has also definite social and political objectives which received their most authoritative expression in Article 11 of the new Constitution. These objectives, it will be recalled, are: (1) in-

crease in public wealth; (2) steady improvement in the material and cultural standards of the working people; and (3) the strengthening of the independence of the Soviet Union and of its capacity for defense.

The Planning Agencies

Early Attempts at Planning. The chief planning authority of the Soviet Union is the State Planning Commission or the Gosplan which was created in February, 1921, as a committee of the Council of People's Commissars. It was some time, however, before the Gosplan became the actual central planning body. The Supreme Economic Council, established in December, 1917, had somewhat similar functions, some of which it retained until its abolition in 1932. The first comprehensive attempt at planning was made in April, 1921, when a special commission for the electrification of Russia was appointed at the suggestion of Lenin. The Commission had the task of preparing a general plan for the development of electric power stations and the use of electric current, a plan that was to be put into effect over a number of years. Lenin attached the greatest importance to this venture and the plan for electrification was later incorporated in the Five Year Plan. In 1925 were published the first so-called "control figures" which were a program of economic development for the year 1925-1926.[1] In 1926 the Soviet Union embarked on a more ambitious program which finally became the first Five Year Plan. Officially put into operation on October 1, 1928, to run for five years, it was declared completed in four years (more exactly, in four years and three months), that is, on December 31, 1932.

The State Planning Commission. The Gosplan, like all other institutions of the Soviet regime, has been subject to frequent structural changes.[2] The members of the Gosplan are appointed by the Council of People's Commissars, of which its president is a member. Since the reorganization of April, 1935, the membership of the Gosplan has been reduced to 70, less than half its previous number. The Gosplan, which heads a vast administration employing several thousand people including a small army of statisticians, has special departments dealing with the various aspects of the national economy. The principal activities of the

[1] For the purposes of planning the economic year was originally reckoned from October to October. Since 1933 it is made to coincide with the calendar year.

[2] The most recent revision of the administrative structure of the Gosplan was carried out by a decree of the Council of People's Commissars of the U.S.S.R. of April 13, 1939.

Gosplan are two-fold: (1) the co-ordination of the vast mass of factual information which reaches it from every corner of the country, and the preparation of a unified plan according to the general directions issued by the Communist Party and the Council of People's Commissars; and (2) the checking of the performance by subordinate institutions of their assignments under the plan.

Other Planning Agencies. The Gosplan of the U.S.S.R. is assisted in the carrying out of its arduous task by a complex network of planning institutions which may be broadly divided into two groups: those arranged on the horizontal or territorial principle, and those arranged on the vertical or functional principle. The territorial group of planning institutions consists of planning commissions of the constituent republics and other territorial subdivisions. Every locality of any importance has its own planning bodies arranged in hierarchical order and directly subordinated to the planning institutions of the territorial subdivisions of which they form a part. A similar administrative scheme is followed in the functional group of planning institutions. This group consists of planning agencies attached to each People's Commissariat of the U.S.S.R., the State Bank, the Union of Co-operative Societies, and so on. The People's Commissariats of the constituent republics have, again, their own planning agencies and so it goes all along the line down to the factories and collective farms which, too, participate in the preparation of the plan. It is self-evident that this extraordinarily complex administrative structure of the planning agencies must lead to a great deal of duplication, for the territorial and functional planning bodies necessarily deal with the same problems although, perhaps, from a somewhat different standpoint. It is the duty of the higher planning bodies to iron out as well as they can the differences that must necessarily arise until the Gosplan of the U.S.S.R. finally produces a comprehensive plan for the Union. The plan is then submitted for the approval of both the Communist Party and the Soviet Government and is put into operation.

The Procedure. The general directions as to the contents of the plan come from the Communist Party and the Soviet Government. It is the duty of the Gosplan to embody these in concrete proposals, supported by a formidable array of statistical data, and to provide a definite assignment for the various branches of economic activity. The preliminary plan is then submitted to the lower planning agencies which transmit the pro-

posed assignments further down the line to the planning bodies under their jurisdiction. Every factory and every collective farm is thus given an opportunity to become acquainted with the proposed plan before it has been finally adopted. Discussions are organized and frequently counter-plans are made by the local bodies. These counter-plans invariably suggest an increase in the original assignment. There seems to be no instance on record of doubts expressed by a factory that the proposed quota could be filled, even though failures to complete the assignments are common. With the same unfailing unanimity that has been already noted in Soviet elections industrial workers and farmers, on the invitation of the local Communists, clamor for more exacting assignments and larger quotas.[1] The plan thus revised then moves up through the hierarchy of planning agencies until the many local suggestions reach the Gosplan. Its statisticians are kept feverishly busy revising the original draft of the plan, although the final assignment would seem to be determined rather by the "general line" of the Party than by the expression of official optimism that comes from the rank and file of the Soviet citizens.

The First, Second, and Third Five Year Plans

The Three Five Year Plans. The first Five Year Plan was published in three bulky volumes comprising, with the appendices, almost 1600 pages, and the second Five Year Plan—in two volumes of slightly smaller format containing over 1300 pages. The text of both plans is replete with innumerable statistics set forth in a formidable array of tables. At the end of 1939 the contents of the third Five Year Plan were known only from brief official summaries and the full text was not yet available, although the plan had theoretically been in operation since the beginning of 1938. The text of both the first and the second Five Year Plans is divided into two main parts: Part I deals with the proposed development of the various branches of national life over a five-year period in the entire territory of the Union; Part II concerns itself with the apportionment of the planned assignments among the territorial subdivisions of the country. The difficulties arising from the continuous shifting of the internal boundaries and the confusion thus introduced in regional

[1] The regulations issued by the Council of People's Commissars on December 17, 1930, and reproduced in the official collection of labor legislation published in 1938, include "passive, indifferent, or negligent attitude" toward the counter-plan among the punishable offences against labor discipline.

planning are duly noted in the introductions to Part II of both plans.

Their Scope. "The Five Year Plan for the Development of National Economy," to give the plan its full name, is really an understatement of the scope of the gigantic venture. Each of the successive plans contains not only a comprehensive program of economic development but also an exhaustive schedule of social, cultural, and educational activities. The chief emphasis of the plan, however, is on the economic aspects, a policy that is perfectly in harmony with the Marxian theory according to which the economic factors—the "modes of production"—determine the character of the social, cultural and political "superstructure." As an effort at mapping out the future course of the nation the Soviet plans are rightly regarded as a unique and stupendous enterprise without precedent in the annals of any country. To give some idea of the immensity of the undertaking a brief enumeration of the topics covered by the plan will have to suffice. Each of the three plans deals, in a varying degree of thoroughness, with the development of industry: machine-building, electric power stations, fuel, mining, chemistry, timber, industries producing consumers' goods, food industries, co-operative associations of producers. Then comes agriculture, transportation, post, telegraph, and telephone. Special sections treat the question of labor, wages, standards of living, cost of production, quality of goods, distribution, and per capita consumption. The discussion of cultural activities includes the expansion of the school system, the training of teachers, the printing of books and newspapers, while the social policies extend to housing, measures for the improvement of public health, and social insurance. The section on finance provides a comprehensive survey of sources from which the stupendous outlay necessitated by the plan is to be met. The first Five Year Plan had a special brief chapter on foreign trade which, however, was omitted from the Second Five Year Plan and, so far as is known, also from the Third.

Under each of the above headings (and the list given is not exhaustive) the plan sets definite goals to be achieved within the following five years and outlines, not always very clearly, by what methods the results desired are to be obtained. The plan maps out the amount of capital to be invested in the various fields, the percentage by which the production of each branch of industry is to be increased, and—also in percentages—the increase in the productivity of labor, the reduction in prices, the in-

crease in monetary and real wages, the reduction of illiteracy, and so on.

Their Political and Social Objectives. Each of the consecutive plans is considered as a definite stage along the road leading the Soviet Union toward integral communism. The objectives of the first Five Year Plan, as outlined in a resolution of the fifteenth congress of the Communist Party in December, 1927, were the industrialization of the U.S.S.R., the reorganization of the rural community on a socialist basis, the overcoming of the capitalist and the strengthening of the socialist elements in the economic organization of the country. These goals were declared to have been achieved by January 1, 1933, when the second Five Year Plan was inaugurated. "The basic political aim of the second Five Year Plan," according to the resolution of the seventeenth conference of the Communist Party, "is the final liquidation of the capitalist elements and of classes in general, the complete elimination of causes that lead to class distinctions and exploitation, and the overcoming of the survival of capitalism in the economic organization and in the minds of men, and the transformation of the entire working population into conscious and active builders of the classless society." V. Molotov, chairman of the Council of People's Commissars, stated early in 1939 that the chief objective of the second Five Year Plan—"the elimination of the causes of exploitation of man by man"—has been achieved.[1] He maintained that "the socialist society of the U.S.S.R. consists now of two classes friendly to one another—the workers and the peasants—the dividing line between these classes as well as between them and the intellectuals is being effaced, is gradually disappearing." He explained that Soviet intellectuals were actually the peasants and workers of yesterday. The social transformation of society, based on the socialization of industry and the collectivization of farming, is leading the Soviet Union into a new era inaugurated by the third Five Year Plan. The goal, according to Molotov, is "the completion of the building up of a classless socialist society and the gradual transition from socialism to communism, a period when the determining factor is the communist education of the toilers, the overcoming of the survival of capitalism in the minds of men—builders of communism."

[1] V. Molotov, Preliminary report (theses) on the third Five-Year Plan prepared for the Eighteenth Congress of the Communist Party, in *Pravda*, January 30, 1939. Information on the third Five-Year Plan is taken from this report and from the Proceedings of the Eighteenth Congress.

Their Economic Program. Such is the political and social program of the first three plans. Their economic program, which displays an even greater uniformity, may be reduced to three principal objectives: (1) rapid industrialization with special emphasis on the building up of the heavy industries that produce the means of production, (2) collectivization of farming, and (3) sustained effort to reduce costs and to increase the productivity of labor.

Uncertainties of Soviet Planning

Inadequacy of Soviet Statistics. An attempt to obtain a clear picture of the working of Soviet planning unfortunately meets with insurmountable obstacles. Chief among them is the absence of basic statistical data, a state of affairs that is certainly surprising in a country where much energy is being spent in filling out innumerable forms dealing with innumerable subjects. Since 1929 the Soviet Government has discontinued the publication of the index of the cost of living thus making impossible the determination of the trend of real wages. All computations in the State budget are made at current prices while the State Planning Commission uses alternately current prices and the prices of 1926-1927. For instance the third Five Year Plan gives the amount of capital investment sometimes in terms of current prices and sometimes in those of 1926-1927. In the absence of a general index of prices the two sets of figures are not comparable and if the State Planning Commission has worked out a method for comparing them it has never been disclosed. The confusion is further increased by the steady outpouring by official agencies of statistical data grievously at variance with other data, equally official. It is extremely rare that cognizance is taken of the flagrant discrepancies; and they are almost never rectified or explained. "Bolshevik self-criticism," that is, the practice of denouncing the failure to carry out certain policies (but never denunciation of the policies themselves) is the duty of every Communist. Such criticism is freely indulged in by the Soviet leaders who zealously castigate the departments under their jurisdiction for having lagged in performing their assignments under the plan, only to conclude a bitter indictment with the triumphant proclamation that the plan has been over-fulfilled in spite of everything. One or two instances of this distressing practice will be noted below.

Inconsistencies of the State Planning Commission. The State Planning Commission, which is merely a subordinate agency of

the government, displays at times puzzling inconsistencies. The first Five Year Plan, to take a striking example, was prepared in two drafts, the maximum and the minimum, the former setting up a much higher goal of achievement than the latter. It was intended to use the maximum draft only if the general conditions were particularly favorable. According to the official summary of the performance of the first Five Year Plan issued by the State Planning Commission in 1933 the actual situation in 1928-1932 was even less favorable than had originally been considered necessary for carying out the provisions of the minimum draft: adverse climatic conditions (and also, no doubt, the forcible drive for collectivization) reduced the 1931 harvest to a starvation level; the world-wide depression and the catastrophic decline in prices, especially those of agricultural produce, completely upset the export and import program of the plan; expenditure on armaments increased far beyond the estimates. Nevertheless the maximum draft was not only put into effect but was completed within four years and three months, thus reducing by nine months the full term of five years. If the official explanation of this amazing development is to be accepted, the people of the Soviet Unions displayed a greater zest for planning than did the State Planning Commission and the Government!

The Plan is Not a Blueprint. In spite of the vagaries of the planning agencies, the inadequate and fragmentary nature of the available information, and the impenetrable veil of mystery that envelops certain essential phases of the planning procedure, official reports afford sufficient data for a general appraisal of the working of the first and second Five Year Plans. It is important to realize that the plan is not a blueprint, that its various elements are but loosely co-ordinated and that there is nothing permanent in their inter-relationship. The Five Year Plan is much more in the nature of a slogan, of a drive toward the attainment of a definite objective, than a detailed program of practical policies. The Five Year Plan is being continuously modified by yearly plans which, again, are subdivided into quarterly plans and even into plans for shorter periods. The departures from the original plan in the process of subsequent revisions are sometimes so great as to be almost revolutionary. The truly remarkable flexibility of Soviet planned economy may be best explained by using concrete examples. The striking disparities between the original assignments and the actual performance under the first and the second Five Year Plan can be traced to

three principal causes: changes in the policies of the Communist Party and of the Soviet government, the state of the world market and the international political situation, and the failure of Soviet enterprises to perform their assignments.

Over-Fulfilment and Under-Fulfilment

Revision of the Program of Collectivization. The most striking example of the revision of the plan by the Communist Party and the Government occurred with reference to the agricultural program under the first Five Year Plan. The plan set as its goal the increase of the area under crops in the so-called "socialized sector," that is, on land occupied by the State farms and the collective farms,[1] from 2.7 per cent of the total area under crops (in 1928) to 17.5 per cent (in 1932). The part of "socialized agriculture" in the supply of marketable grain in 1932 as determined by the plan was to be 43 per cent. As a result of the ruthless drive for collectivization, however, this assignment of the plan was vastly exceeded. In 1932 78 per cent of the area under crops was in the hands of the State and the collective farms, and they together produced 84 per cent of the entire marketable supply of grain. The significance of this change of program cannot be exaggerated. It affected scores of millions among the rural population and made imperative a fundamental revision of the entire plan for heavy industry, since collectivization of agriculture, as will be shown in Chapter VI, is based on the use of modern agricultural machinery. This, again, demanded a far-reaching readjustment of the plan regarding transportation, production of metal ore and coal, supply of skilled labor, financing, etc. It is not surprising that the official summary of the performance of the first Five Year Plan points out the creation of a number of important industrial works, some of them among the most ambitious of Soviet ventures, for which no provision was made in the plan. It thus appears that the Soviet Government, if and when it is considered desirable, does not hesitate to revise the plan for political or other reasons.

Abandonment of the Program for the Expansion of Foreign Trade. It is much more usual, however, that the plan has to be amended as a result of conditions over which the Soviet Government has no control. The first Five Year Plan, for instance, was based on recognition of the necessity of closer economic ties between the Soviet Union and the outside world. The plan outlined

[1] See below, pp. 899-903.

a broad policy providing for concessions to foreign capital and expansion of Russian exports, which were to be increased two and one half times between 1928 and 1932. The worldwide depression made a clean sweep of these optimistic and fanciful schemes. Foreign capital showed little enthusiasm for the opportunities offered by the communist State. Russian exports, which had been valued at 791 million rubles in 1927-1928 and had increased to 1,036 million rubles in 1930, toppled down to 575 million rubles in 1932 and declined still further in the following years.[1] Although the physical volume of Soviet exports actually increased, their value, because of the fall in world prices, remained far below the planned estimates. These conditions necessitated a drastic revision of the import plan which played an essential part in the process of industrialization. Far from being immune from the effects of the world depression Soviet foreign trade reacted to it in a manner in no way different from that of the foreign trade of the capitalist nations. One of the consequences of the failure of the import-export program of the first Five Year Plan was the speeding up of the construction of machine-building plants in the Soviet Union so that its independence of the capitalistic countries might be increased. Another consequence was the omission of any reference to foreign trade in the second and third Five Year Plans, an omission that may be interpreted as tacit acceptance of the fact that international exchanges must remain outside the scope of planned economy.

Failure of Soviet Agencies to Fulfil Their Assignments. By far the most important reason for the revision of the plan was the failure of various branches of the national economy to fulfil their assignments. The resulting instability affected the performance not only of the Five Year Plan but also of plans for shorter periods. Generalized and comprehensive figures of performance often obscure the actual situation. For instance, the fulfilment by industry of its assignments for 1932, the last year of the first Five Year Plan, was officially stated to be 96.4 per cent. This summary figure was composed of divergent elements: the performance of the fuel industry was 99.8 per cent of the assignment; of the metal industry, 127.2 per cent; of the timber industry, 86.3 per cent; of the cotton (textile) industry, 54.2 per cent. Even more noteworthy were the truly remarkable deviations from the plan within the metal industry group in the same year. The performance in the machine-building and metal goods industry

[1] The average annual Russian exports in 1909-1913 were 1,501 million rubles.

was 181.2 per cent of the assignment; pig iron, 62.0 per cent; steel, 56.7 per cent; steel-rolling, 53.7 per cent; iron ore, 62.9 per cent. It is extremely difficult to find a plausible explanation of this extraordinary state of affairs with the machine-building industry over-fulfilling its quota by a large percentage while the production of pig-iron, steel, and ore lagged sadly behind. The mere existence of such disproportions strongly indicates that even an approximate co-ordination of the various parts of the plan is still a thing of the future.

Effects of Low Productivity of Labor. The increase in the productivity of labor and the resulting reduction in the costs of production and in prices thus far has proved one of the most unmanageable elements in Soviet planned economy. The whole plan of industrialization is based on the assumption of increased productivity of labor. The Soviet leaders never tire of quoting Lenin's dictum that "the productivity of labor is, in the last resort, the most important, the most essential condition for the victory of the new social order." The first Five Year Plan called for an increase of 110 per cent in the productivity of labor. The actual average increase, according to official estimates, was 41 per cent, a most impressive achievement but nevertheless far below the assignment. The result was that the number of wage-earners (workers and employees), which was to increase under the first Five Year Plan from 11.3 millions (1927-1928) to 15.8 millions (1932), or by 39 per cent, actually reached the much higher figure of 22.8 millions, that is, it showed an increase of over 100 per cent. In this way unemployment officially disappeared. The unplanned absorption of an additional seven million men, which must have necessitated a thorough revision of the other parts of the plan, is an eloquent evidence of the flexibility of Soviet planning. The second Five Year Plan, as Molotov pointed out in his report to the eighteenth congress of the Communist Party in March, 1939, failed to accomplish the proposed lowering of prices of consumers' goods. The higher level of the cost of living required a revision of wage rates with the result that the total annual amount paid in wages increased from 1932 to 1937 by 150 per cent, instead of by 55 per cent as provided in the plan.[1] The

[1] It was claimed by Molotov that under the second Five-Year Plan the productivity of labor in heavy industry has increased by 82 per cent instead of the 63 per cent required by the plan, and in the building industry by 83 per cent instead of the 75 per cent that the plan demanded. Why this increase in the productivity of labor has failed to bring about a reduction in costs and prices of consumers' goods the Chairman of the Council of People's Commissars did not explain. Presumably the productivity of labor did not increase in industries pro-

absence of an index of the cost of living, as already pointed out, makes it impossible to determine whether the increase in monetary wages has brought about an increase in real wages.

Plan—a Slogan Rather than a Program of Practical Policy. The above examples, which it would be easy to multiply, should make it clear that there is in the Soviet plan nothing in the nature of a blueprint whose component parts are carefully co-ordinated. The character of the Five Year Plans as drives toward the achievement of definite political, social and economic objectives is emphasized by the enthusiastic reception given by the Soviet press to frequent announcements that this or that branch of the national economy has exceeded its quota. If the component parts of the plan were properly co-ordinated over-fulfilment would be no less disturbing and unwelcome than under-fulfilment, which is invariably and bitterly denounced. Strange as this may appear at first sight, the practical usefulness of a Five Year Plan would seem to be very slight indeed except as a slogan. This explains the equanimity with which Soviet leaders have accepted the inability of the Gosplan to produce the third Five Year Plan, a failure which is partly due, according to official reports, to "wrecking" activities within the Gosplan itself and to the drastic purge of that body.[1]

The Cost of Industrialization

Capital Investment. According to official statements the capital investment in Socialist economy under the first Five Year Plan was 52.5 billion rubles, exceeding the original estimates by 11.9 per cent. Capital investment under the second Five Year Plan, according to Molotov, was 115 billion rubles (the plan called for an investment of 133.4 billion rubles), and the third Five Year Plan demands a further outlay for the same purpose of 180 billion rubles. To these huge amounts must be added the rapidly increasing expenditure on armaments, salaries and wages, social services, and other items of the State budget. It is of interest to ascertain from what sources these large sums are obtained.

ducing consumers' goods. Molotov's statement concerning the increase of the productivity of labor in heavy industry, moreover, is not easily reconcilable with the assertion of Kaganovich, Commissar for Heavy Industry, who declared that "the enterprises of the People's Commissariat for Heavy Industry not only failed to reduce costs in 1937 but, on the contrary, increased them." (*Industriia,* January 29, 1938.)

[1] In his report to the eighteenth congress of the Communist Party Stalin spoke scornfully of some of the assignments under the second Five-Year Plan as "fantastic, if not worse."

Turnover Tax Chief Source of Revenue. The chief source of Soviet revenue is the turnover tax which was first introduced in October 1930.

REVENUE FROM THE TURNOVER TAX[1]

	1931	*1934*	*1935*	*1936*	*1937*	*1938*	*1939*	*1940*
Total revenue in billion rubles	19.0	49.8	67.4	83.8	96.6	127.6	155.6	184.0
Yield of the turnover tax in billion rubles	11.6	37.6	52.1	65.8	75.9	80.4	92.4	108.6
Turnover tax in percentage of total revenue	61.1	75.5	77.3	78.5	78.6	63.1	59.3	58.9

[1] The figures in this table refer to the "unified" budget which comprises the federal budget, the budgets of the constituent republics, and grants to local budgets. The figures for 1931-1938 are for the budget as executed, while those for 1939 and 1940 are from the draft budgets.

The Soviet ruble is not quoted on the stock exchanges of the capitalist countries. The official rate of exchange is five rubles to the dollar.

All other sources of revenue are dwarfed by the turnover tax although since 1938 its relative importance has shown a tendency to decline. The receipts from the "profits" of nationalized industry, which rank next to those of the turnover tax, were in 1937 only 6.5 billion rubles and in 1938 10.6 billion rubles. In 1939, however, receipts from "profits" were expected to produce 17.7 billion rubles and in 1940 22.4 billion rubles. The yield of loans, which netted the government during the first and second Five Year Plans some 25 billion rubles, was 7.6 billion rubles in 1938 and was expected to produce 10 billion rubles in 1939 and 12.0 billion rubles in 1940. Direct taxation plays a very subordinate part in Soviet finance. In 1937 taxes "levied on the population" yielded merely 2.6 billion rubles and those levied on "enterprises and organizations" less than 1 billion rubles. In 1938 direct taxes "on the population" amounted to 5 billion rubles and their estimated yield in 1939 was 6.5 billion rubles and in 1940 9.7 billion rubles.[1]

Turnover Tax Levied on Necessities. It is thus clear that

[1] The figures for 1938-1940, and also some of the figures for 1936 and 1937, are taken from the report presented to the Supreme Soviet by the People's Commissar for Finance, A. Zverev, in August, 1938, in May, 1939, and in March-April, 1940. Not a few of the data quoted by the Commissar for Finance are seemingly contradictory and difficult to comprehend. He pointed out that a number of departments and enterprises had failed to fulfil the financial plan. For instance, the estimated revenue from the turnover tax in 1938 was 83.3 billion rubles but the actual yield

the process of industrialization is financed by the turnover tax, a general sales tax levied on the turnover of all State-owned enterprises and usually computed in percentages of the sales' price. The yield of the tax depends on three factors: the volume of production, the price of goods, and the tax rate. In the Soviet Union all three of these are controlled by the State. It is often stated that the turnover tax is levied primarily on luxuries. Nothing could be more misleading than this assertion, as the immense receipts from the tax should suggest even to students who never take the trouble to consult the actual rates of the tax published in Soviet decrees. Since the Soviet Union is a country of very low incomes it is self-evident that a tax on luxuries could never have produced the huge sums collected by the Moscow Treasury.[1] The budget of the U.S.S.R. tells a very different story. In 1937 [2] the bulk of the revenue from the turnover tax was derived from the following agencies: Committee (now People's Commissariat) for the Purchasing of Agricultural Products, an institution to which the peasants compulsorily surrender a definite share of their grain at extremely low prices [3]—24.1 billion rubles; People's Commissariat of Food Industry—20.4 billion rubles; the Liquor Administration—6.2 billion rubles; the State Trade Administration and the co-operative societies—4.5 billion rubles; the People's Commissariat of Light Industry, that is, industries producing consumers' goods,—11.4 billion rubles. Taxation of foodstuffs alone provided about two thirds of the

was only 80.4 billion rubles. Yet the budget for both years was, as usual, closed with a surplus. From what sources the deficit was made good M. Zverev did not explain.

Information on Soviet finance has always been grievously inadequate. The publication of even the customary budgetary statement indicating the revenue derived from various departments and the exact allocation of the sums to be spent has been discontinued since the establishment in 1937 of the new Soviet parliament, the Supreme Soviet. The chief official sources now are the statements of the People's Commissar for Finance, statements that are not only confused but also summary in the extreme. For instance, in M. Zverev's declaration to the Supreme Soviet in May, 1939, all revenues were grouped under six headings. The items listed accounted for merely some 112.2 billion rubles of the 1938 revenue which was given as 127.6 billion rubles. The estimates for 1939 and 1940 were just as lacking in precision. Where did the balance of the revenue come from? The question, needless to say, was never raised in the Supreme Soviet. Its members are said to have been supplied with a financial statement that might have been more detailed but unfortunately it seems never to have been published.

[1] The grossest ignorance of Soviet taxation is displayed by Sidney and Beatrice Webb in their much admired but notoriously misleading monumental work, *Soviet Communism: A New Civilization?* (New York, 1936). "The indirect taxation. . . ," write the Webbs, centers on "undesirable luxuries and upon expenditure not much incurred by the masses of the people." (P. 117.)

[2] More recent data are not available. See above, p. 874.

[3] See below, pp. 905-906.

yield of the turnover tax and accounted for more than half of the entire revenue of the Soviet Union.

Its Rates. The rate of the turnover tax is extremely high and subject to frequent changes. The rates on bread and flour, which are approximately 70 to 80 per cent, account for the enormous revenue of the People's Commissariat for the Purchasing of Agricultural Products. The following rates were effective in 1937; meat, from 61 to 82 per cent; salt, 66 to 83 per cent; cigarettes, 75 to 90 per cent; cheap tobacco, 68 to 75 per cent; cottons, 44 to 65 per cent; hose, 15 to 65 per cent; knitted underwear, 25 to 55 per cent; rubber overshoes, 33 per cent; sewing machines, 39 per cent; leather footwear, 17 to 35 per cent; powder, shaving cream, and toothpaste, 68 per cent; soap, 34 to 59 per cent. Throughout 1938 and 1939 the rates of the turnover tax were maintained at the same high level which, of course, was to be expected since the revenue from this source, according to the budget, continues to increase.[1]

What It Means to the Consumers. In order to realize what the turnover tax means to the consumers it must be emphasized again that its rates are computed on the basis of a percentage of the selling price. For instance, the tax on sugar in 1936 was 85 per cent (and it seems that it has been maintained at that level since) and a kilogram (2.2 lbs.) of sugar sold at a fixed price of 4.20 rubles. Of this amount 3.57 rubles went to the Treasury and the balance of 0.63 rubles was to cover the cost of production and the "planned profit" of the sugar refinery. It has been estimated that of the total receipts from retail trade 62.1 per cent in 1936 and 58.6 per cent in 1937 were collected by the Treasury in the guise of the turnover tax.

Inequality of Incomes. It is generally accepted by economists that an indirect tax on articles of general consumption, such as the cheaper foodstuffs, is unfair to the poorer classes who spend a larger proportion of their income on the bare necessities. This argument, of course, would not apply in the Soviet Union if it had done away with the inequality of incomes. This, however,

[1] Some of the rates of the turnover tax enacted in 1939 were as follows: fish and fish products, 5 to 36 per cent; bicycles for adults, 58 per cent; bicycles for children and young persons, 20 to 38 per cent; denatured alcohol, 53 per cent; clocks, including alarm-clocks, 25 to 40 per cent; "artistic" clocks, 7 per cent; playing cards, 55 to 82 per cent; gramophones and gramophone needles, 10 to 60 per cent; potatoes (when the retail price is 0.50 rubles per kilogram) 232 to 348 rubles per ton in Moscow and 194 to 325 rubles in Leningrad (when the retail price is higher or lower than 0.50 rubles per kilogram the rates of the tax are adjusted accordingly).

is not the case. The principle "from each according to his ability, to each according to his work" has been enshrined in the Soviet Constitution but the inequality of incomes, while less pronounced than in the capitalist countries, is still not negligible. The decree of November 1, 1937, increased the minimum wage of workers in industry and transportation to 110 rubles a month. It is extremely likely that the earnings of a large group of farmers are below even this very modest level. The average annual earnings of industrial workers in 1938 were, according to Stalin's report to the eighteenth congress of the Communist Party, 3447 rubles or 289 rubles per month. The decree of August 29, 1938, prohibited the payment of salaries above 2,000 rubles per month, except with the special permission of the Council of People's Commissars of the U.S.S.R. The officials in receipt of the higher salaries moreover enjoy valuable privileges such as obtaining better living accommodations and sometimes being permitted even such luxuries as the use of a car. Their standard of living is very different from that of the workers in the lower wage brackets who, with the peasants, represent the bulk of the population. And it is the latter group that contributes in proportion to its earnings the larger share of the yield of the turnover tax.[1]

Reasons for the Turnover Tax. It may appear strange that the Soviet Government should make use of the devious artifice represented by the turnover tax, instead of simply selling goods at a remunerative price and turning over the profits to the Treasury, the State being the owner of all industrial enterprises. The explanation given by the Soviet economists is that the turnover tax is a more flexible and reliable source of revenue than are the profits of socialized industry. Receipts from the turnover tax are in no way affected by the element of cost of production and this factor, which of course determines the size of the profits, has so far only too often eluded Government control. The abandonment of the turnover tax might have involved the Government in a continuous upward revision of prices, a move that would be politically undesirable. Since the turnover tax is never discussed in the Soviet press it is probable that the majority of the citizens are just as little aware of its existence as were

[1] It is highly characteristic of the attitude of the new legislature that the Supreme Soviet of the U.S.S.R. voted, in August, 1938, for an increase (in excess of the estimate) of the turnover tax for 1938 by 591.5 million rubles! Yet the actual yield of the tax in 1938, as already pointed out, was some 2.9 billion rubles short of the estimates. This unfortunate experience did not damp the zeal of the Soviet legislators. In May, 1939, they again voted an increase of the turnover tax for the current year, this time by 410.8 million rubles.

Sidney and Beatrice Webb. The turnover tax, moreover, plays its part in keeping every economic agency strictly accountable for the performance of its assignment under the plan, a principle that permeates the entire Soviet planned economy. It certainly serves well its purpose as a source of seemingly inexhaustible revenue.

The Balance-Sheet

Criticism of Planning. The considerations presented above should not necessarily be interpreted as a condemnation of Soviet planning. It is, however, certain beyond reasonable doubt that the planned order is still in an experimental stage, that it is lacking in precision and definiteness, that the process of industrialization has been extremely costly, and that the compulsory contribution by the poorer groups has been somewhat larger in proportion to their income than that of those with larger incomes. These criticisms, however, must appear captious and trivial to those who share the views of the Soviet leaders that the U.S.S.R. is about to enter the stage of integral communism, to be transformed into the classless and stateless community of the future. Nor should the fact be disregarded that while many parts of the plan have gone by default or been drastically amended, its general objectives were never lost sight of and some of them have been definitely achieved.

Its Achievements. Private ownership of the means of production has disappeared and the collectivization of farming is an accomplished fact. The industrialization of the country has made immense progress while the volume of industrial production has increased many fold. In 1937, according to Molotov, 80 per cent of industrial production in Russia came from enterprises established under the first and the second Five Year Plans. The Chairman of the Council of People's Commissars pointed out with justifiable pride that 90 per cent of all the tractors employed in Soviet agriculture were of domestic manufacture while only a few years before none were made in Russia. This is certainly no mean achievement, even though one may believe not only that it might have been less costly to purchase the tractors abroad, for instance in the United States, but also that the American, British and German machines are vastly superior to those manufactured in the Soviet Union. The fact remains that the Soviet Government has decided to industrialize Russia and that it has nearly accomplished this purpose within a surprisingly short time.

A Mixed Performance. The volume of production which, it is claimed, increased between 1929 and 1937 by as much as 300 or 400 per cent, does not, however, tell the whole story. There are other elements in the industrial situation that are far less pleasing. The cost of production remains high and the quality is grievously unsatisfactory. Shortage of the most common goods even in Moscow is continuously reported in the Soviet press. The productivity of labor, official statements to the contrary notwithstanding, is extremely low and the Government has to use extraordinary measures to enforce labor discipline, which appears to be sadly lacking. The absence of adequate information, for which the Soviet Government itself is to blame, makes it impossible to reach a definite conclusion about the trend of real wages but it is abundantly clear that even though the standard of living has improved—and this is often and rightly questioned—it continues to remain far below the accepted minimum in any other modern industrial country.[1]

Difficulties Inherent in Planning. There is no indication yet that Soviet planned economy has found a solution of many of the difficulties that beset the capitalist world. Communist economics has failed so far to produce an adequate substitute for private initiative and the mechanism of prices and some of the fundamental aspects of planning are still enveloped in an impenetrable veil of mystery. The elimination of private enterprise had inevitably led to the enthronement of a huge bureaucracy and the creation of red tape entanglements which the Soviet leaders are the first to lament. The office holders, both the lax and the over-zealous, are publicly castigated, demoted, exiled to remote regions and their place is taken by others. But the question naturally arises: is the failure of the huge government machine to work properly due merely to the dishonesty, negligence, or inefficiency of this or that official, or is it inherent in the system itself? It is probably not unfair to say that while Soviet planned

[1] The hazards involved in determining the trend of real wages in the absence of an index of the cost of living (see above, p. 868) may be illustrated by the following example. Molotov stated at the eighteenth congress of the Communist Party in March, 1939, that under the second Five Year Plan, that is from 1932 to 1937, the real wages of workers had increased by 101 per cent. A careful analysis of the available data by Professor S. N. Prokopovich, a foremost authority on the subject, led him to the avowedly tentative conclusion that far from increasing, the real wages of industrial workers during this period actually declined by some 45 per cent. Professor Prokopovich, however, believes that in 1927-1928 real wages in industry considerably exceeded the pre-war level. S. N. Prokopovich (Prokopovicz), editor, *Quarterly Bulletin of Soviet-Russian Economics,* Nos. 1-2, November, 1939, Geneva.

economy has eliminated some of the frictions existing under capitalism it is confronted with new and even more formidable difficulties for which no solution is yet in sight.

Comparison with the Capitalist Countries. What the Soviet Government has accomplished so far (leaving aside its political objectives) is to have traveled in record time a section of the long road toward industrialization on which it was preceded by other countries. Time, however, is an essential element in every human enterprise, especially when the enterprise involves a revolutionary change in the ways of living of some hundred and seventy million human beings. Viewing the situation from a purely economic standpoint it appears that the great capitalist countries—the United States, Great Britain, Germany and France—were in 1939 still far ahead of the Soviet Union in all the essential fields of production, a fact willingly admitted by Stalin and Molotov in their reports to the eighteenth congress of the Communist Party in March, 1939. It took those countries, no doubt, a much longer time to reach the position they occupy today, but the process of industrialization in those countries was also far less painful than it was under the dictatorship of the proletariat. The Soviet Union is determined to eclipse the record of the capitalist nations within the next few years. This desire for speed, the reasons for which are not obvious, has undoubtedly added much to the difficulties of the Soviet leaders and to the hardships the process of industrialization imposes upon the people. The Soviet experiment has proved so far that a socialist economy can exist, but it still remains to be proved that it is more equitable and more efficient than an organization based on private property and private initiative.

CHAPTER VI. THE STATE IN BUSINESS

Elimination of Private Business Enterprise

State Ownership of Means of Production. At the end of 1937, the closing year of the second Five Year Plan, 98.7 of all the means of production in the Soviet Union were officially stated to be "socialist property," that is, they were controlled either by the State or by the collective farms. Of the gross production of industry, 99.8 per cent came from State-owned enterprises, 98.6 per cent of agricultural production was supplied by State farms or by collective farms, while commerce was 100 per cent in the hands of socialist distributing agencies. This complete elimination of private business enterprise is the most striking and the most significant feature of the Soviet economic organization. Under the political regime of the dictatorship of the proletariat the expropriation of the proprietary classes was a relatively simple, if painful, process. Economic planning is avowedly the means for the achievement of a definite aim and not an objective in itself. In the final analysis the ability of the communist leaders to operate smoothly and efficiently the complex mechanism of a great and rapidly industrialized modern State is the crucial test of the regime and the success or failure of the economic controls will determine in the long run the ultimate fate of the Soviet experiment.

Agencies for the Management of Industry

The Early Period. From the advent of the Bolsheviks to power up to the end of 1939 the policy of the Soviet Government toward industry has gone through a number of important transformations which have been reflected in the administrative structure of the agencies in charge of industrial activities. It will be recalled that between November, 1917, and the summer of 1918 only a relatively few branches of industry and some of the larger enterprises in other branches were taken over by the Government. The decree on Workers' Control of November 14, 1917,

created (or rather sanctioned) the existence in industry of a regime of uneasy dualism, the management of industrial enterprises being divided between the owners, on the one hand, and the committees of workers, on the other. The committees of workers were organized spontaneously in many enterprises when the Provisional Government was still in office, that is, before the decree of November 14. It is uncertain whether the regime of Workers' Control was meant to be a program of lasting cooperation between capital and labor, or merely a manoeuvre for the "encirclement of capitalism." It was brought to an end by the decree of June 28, 1918, which ordered the wholesale nationalization of industrial enterprises and ushered in the period of War Communism. The following months, until the inauguration of the New Economic Policy in March, 1921, were characterized by a policy of rigid centralization, industrial enterprises being deprived, at least in theory, of all independence. The whole business of the country was administered from above by the Supreme Economic Council acting through purely bureaucratic agencies known as *glavki* and *tsentri* (Chief Administrations and Central Boards). This method, admittedly, was not a success. By 1921 the production of large scale industry fell to 17 per cent of its pre-war level, a decline for which the general conditions prevailing during the Civil War were at least in part responsible.

The Soviet Trusts. The period of the New Economic Policy, with its sharp reaction against the methods of War Communism, brought into existence a new type of management of industrial activities through agencies known as trusts. A trust consisted of a number of industrial enterprises, such as factories, plants, mines, etc., grouped together under a board appointed by the Supreme Economic Council after consultation with the trade unions. The position of the members of the board of a trust was analogous to that of the trustees of a public institution under the American or English law. The trust received from the State definite properties which consisted of the physical equipment of enterprises that were members of the trust, buildings, machinery, stocks of fuel and raw materials, as well as appropriations from the budget. The board of the trust appointed the managers of the enterprises, entered into collective labor agreements with the trade unions, and supervised the work of the enterprises under its jurisdiction, while it was itself responsible to the Supreme Economic Council. Relative independence of the State was the

chief feature distinguishing the trusts from the agencies of War Communism. Within the provisions of their respective charters, the trusts enjoyed freedom of action. As the congress of the Soviets in 1922 put it "the struggle between communist and individualistic economies is now being transferred to economic ground, the market; here nationalized industry controlled by the proletarian State must, following the competitive methods of the market, assert its unchallengeable superiority." The trusts were therefore to conduct their business on the "commercial principle," that is, they were to be run for profit. According to the territorial scope of their activities the trusts were divided into three classes: national trusts, republican trusts, and local trusts.

The Syndicates. The trustification of industry proceeded rapidly since the enterprises were anxious to escape the straitjacket of War Communism controls. It proved, however, more difficult than had been imagined by communist leaders to assert the "unchallengeable superiority" of nationalized industry. The trusts often found themselves in competition with one another and this led to the creation of syndicates which performed many functions similar to those of syndicates in the capitalist world, with the important difference, however, that Soviet syndicates did not enjoy the power to limit the volume of production and had to accept the maximum prices determined by the Supreme Economic Council. The first syndicate (textile) was organized in February, 1922.

The Principle of "Economic (or Cost) Accounting." The relative economic freedom enjoyed by the trusts proved short-lived. As planned economy was gradually encroaching on the New Economic Policy the trusts found themselves in a rapidly increasing dependence on the higher government agencies—the Supreme Economic Council, the People's Commissariats, the State Planning Commission. The Law ("model charter") of June 29, 1927, which re-defined the position of the trusts, substituted for the "commercial principle," that is, business for profit, the principle of "economic (or cost) accounting" by which was meant the duty of the trusts to strive for the fulfilment of the provisions of the plan. The degree of compliance with the plan was made the yardstick by which the efficiency of any economic agency was to be measured. The interpretation of this principle, which became one of the pillars of Soviet planned economy, was somewhat illogical, since the over-fulfilment of planned assignments

was considered as a desirable goal, while failures to fill the quotas were sternly discouraged. Another important change introduced by the Law of June, 1927, was the increased independence of the trusts enjoyed by the enterprises. In the earlier legislation the trust, and not the enterprise, was considered the basic unit of industrial organization. The fifteenth congress of the Communist Party held in December, 1927, voiced some sharp criticism of the stifling influence of the excessive centralization that developed inside the trusts upon local initiative; it also emphasized the necessity of increasing both the rights and the responsibilities of the enterprises.

Policy of Decentralization. The emancipation of the enterprises from the trust, a process inaugurated by the Law of 1927, was further advanced by the resolution of the Communist Party of December 5, 1929, and by subsequent legislation. The resolution proclaimed that "the enterprise is the basic unit of industrial organization" and must be independent within the provisions of the plan. The directors of the enterprise must be given full authority and must accept full responsibility for the fulfilment by the enterprise of its assignment under the plan. The resolution of December, 1929, moreover, introduced other important changes in the management of industry. The work of the departments of the Supreme Economic Council was declared to be unsatisfactory. New organs of industrial control, the "combines" (*obedinenie*), took over the functions of the syndicates and of some of the departments of the Supreme Economic Councils. The "combines" consisted of groups of trusts and industrial enterprises united under an appointed board. The functions of the "combines" comprised "the planning of production, planning of capital investment, technical guidance, organization of sales and supply, control of commercial and financial activities, questions of labor, training of workers, appointment and dismissal of the higher personnel." There were three types of "combines": those uniting trusts and enterprises working on a national scale; those uniting enterprises and trusts working on a national, republican, and local scale; and those uniting enterprises and trusts working on a republican and local scale. The chief duty of the "combines" was the technical guidance of the trusts and enterprises in matters of production. They were to exercise their powers according to the "functional principle." The functions of the trusts, under the 1929 plan, were greatly curtailed. The Supreme Economic Council, which lost some of its powers, was to concen-

trate on general planning and co-ordination, and on controlling the work of the "combines" whose boards it appointed.

Reorganization on the Basis of Greater Specialization. The "combines" were duly organized, but the "functional" principle on which the 1929 plan was based proved unworkable. It led, once more, to extreme centralization, the "combines" extending their authority to a very large number of enterprises, sometimes hundreds of them, scattered over the territory of the Union. Stalin denounced the resulting organization of industry in a speech delivered on June 23, 1931, and he demanded its reconstruction on the basis of greater specialization. There followed a hasty remodelling of the administrative structure. The large "combines" were split into smaller units and in January, 1932, the Supreme Economic Council itself ceased to exist and was replaced by three People's Commissariats—that of Heavy Industry, of Light Industry, and of the Timber Industry. The move in the direction of greater specialization was accompanied by a number of measures increasing both the powers and the responsibilities of the higher personnel and substituting responsible officers for industrial boards.

The "Territorial-Productive" Principle. The anticipated improvement, however, failed to materialize and the seventeenth congress of the Communist Party in January, 1934, decided to liquidate all agencies based on the "functional" principle and to replace them with new ones organized on the "territorial-productive" principle. The participation of local, regional, and republican bodies in the management of industry was increased. "Combines" were abolished, the number of trusts was reduced, and the ties of the enterprises with the central departments were strengthened. The purpose of the reform was the elimination of bureaucratism and the substitution for it of personal contact and guidance. The plan also provided for the abolition of executive boards in all institutions in charge of industry. Their place was taken by appointed officers. At the same time advisory councils were created in the Commissariats. The councils, which were to meet twice a month, were composed of representatives from the factories, a measure that had for its purpose to keep the heads of the departments in close touch with local conditions.

General Scheme of Industrial Controls. The resulting structure of the industrial administration is approximately as follows. The highest administrative organ for each branch of industry is the People's Commissariat of the U.S.S.R. It has a number of

departments organized on the "territorial-productive principle," a somewhat mysterious formula which would seem to mean that a department is not concerned with an entire industry, but only with an enterprise engaged in a definite line of production and located in a specified territory of limited area. Such departments have full powers in dealing with the production of the trusts and enterprises. They provide for them guidance on technical and financial questions and they control the sales of goods produced and the supply of raw materials. People's Commissariats have also special councils which deal with technical and scientific questions. The lower links in the chain of administrative agencies are the trusts and the enterprises. The smaller enterprises are controlled by the People's Commissariats of the constituent republics and other subordinate organs.

Problem of the Management of Industry Still Unsolved. It will thus appear that the substitution of socialist controls for private enterprise proved by no means so easy and simple as Lenin had imagined it to be in 1917. The continuous remodelling of the administration of Soviet industries, a process that has been merely outlined above, suggests that recent trends are in the direction of greater differentiation and specialization.[1] It would be rash to conclude, however, that the riddle of industrial management in a socialist State has been solved. The truly amazing instability of the administrative structure that directs the industrialization of the country merely indicates that the Soviet Government is proceeding by the time honored method of trial and error. It is unfortunate for the Soviet citizens that this method is always very costly, especially in a socialist State where the Government controls all the economic activities of the nation.

Prices and Efficiency

Difficulties Resulting from the Abolition of Private Enterprise. The fundamental difficulty of industrial management in a socialist society lies much deeper than is suggested by the verbose and confused discussion in the Soviet press of the relative merits of the "territorial-productive" and the "functional" principle of organization. The root of the trouble is the necessity of discovering an adequate substitute for the mechanism of prices and of creating the stimulus toward business efficiency that is supplied under capitalism by the competition of private interests.

[1] See above, p. 847.

Nothing is more distasteful to a Communist than capitalist competition, yet its absence in the Soviet Union has created new and formidable problems which still await solution. It would be easy to fill pages with quotations from pronouncements of the most authoritative Soviet bodies and leaders denouncing the laxity, inefficiency, waste, and bureaucratic procrastination that infect every department of the country's economic life. The efforts of the Soviet Government are directed largely toward the eradication of these conditions.

Price Policy. The prices of all manufactured goods in the U.S.S.R. are fixed by the State. The method by which prices are computed is not disclosed, but presumably they are based on the "unchangeable prices of 1926-1927," that is, the price level in the last year of the New Economic Policy. Under Soviet conditions planned prices are largely in the nature of a bookkeeping device. They nevertheless play an extremely important part in the actual management of industry, especially in the attempts to reduce costs. Every industrial enterprise and every trust receive under the plan a definite assignment which specifies the volume of goods to be produced, the price and quality of the goods, and the cost of production. The latter consists of the cost of raw materials and fuel supplied at fixed prices, labor costs, taxes, and other expenses incidental to the working of the enterprise. The planned cost of production of an enterprise is presumably arrived at by reducing its actual cost in the preceding year by the percentage prescribed in the plan. Every trust and every enterprise has its own balance sheet and is rated according to the principle of "economic (or cost) accounting"; that is, its actual performance is checked against the assignment of the plan. If the enterprise succeeds in producing the volume of goods demanded by the plan and maintains its costs within the prescribed limits without deterioration in the quality of the goods, the income and the outgo of the enterprise are so balanced as to produce a "planned profit."

Its Revision in 1936. It was customary in the early years of planned economy to price raw and building materials, machinery and equipment below cost as a general measure for the encouragement of industrialization. The deficit was made good by budgetary appropriations. In 1936 this policy was abandoned as both uneconomic and demoralizing and it is now the aim of the Soviet Government to make every branch of industry self-supporting.

The method adopted consists of fixing the price of every commodity at a figure corresponding to the average cost of production. The losses of some of the enterprises, under this plan, are to be compensated by the gains of others in the same industry. In other words, the less efficient enterprises, which under capitalism would be forced out of business, continue to carry on at the expense of the more efficient enterprises producing similar goods. Various methods are being devised, however, to make all the enterprises self-supporting within the provisions of the plan.

The "Director's Fund." The decree of April 19, 1936, established in every enterprise a "director's fund" to consist of contributions from the "profits." An enterprise that has fulfilled its assignment retains 4 per cent of the "planned profits" which are paid into the "director's fund." If the "profits" exceed those planned, the "director's fund" benefits to the extent of 50 per cent of the surplus "profits." The fund is spent on housing for the workers and employees of the enterprise, on cultural activities, distribution of bonuses, and technical improvements. A personal interest is thus created encouraging the employees to strive for the fulfilment and over-fulfilment of the plan. This ingenious device extends to the enterprises the principle of Article 12 of the Constitution: "From each according to his ability, to each according to his work." It does nothing, however, to relieve the plight of those enterprises—and their number appears to be very large—that prove unable to fulfil their assignments. Their directors and communist leaders are likely to find themselves in the concentration camps in the Arctic region or in Siberia, or, if they are lucky, to be merely demoted. But since the enterprises are to continue in business their deficit in some form or other must be made good by appropriations from the budget. And this would seem to mean that the burden of the turnover tax is likely to continue to increase.

Grave Consequences of the Absence of Adequate Price Policy. The price structure is probably one of the weakest points in communist economics. It injects in the planned order an element of uncertainty and arbitrariness the importance of which cannot be exaggerated.

Wages and Labor Discipline

Struggle for Higher Efficiency of Labor. Hardly less thorny has thus far been the problem of increasing the productivity of labor which, according to the Communists, is the cornerstone

of the entire economic structure.[1] Greater productivity of labor is essential for the reduction of costs, the lowering of prices, the raising of the standards of living. Productivity of labor depends on the efficient organization of production, the adequate supply of skilled workers, the maintenance of labor discipline, and last but not least, on providing the workers with the proper incentive to do their jobs well. The Soviet Government has given much attention to the training of engineers and skilled labor and to the study of methods of mass production. Nothing is more admired in the Soviet Union than Henry Ford and his assembly line. But the training of highly-qualified engineers and skilled mechanics is necessarily a slow process, especially in a country newly converted to methods of advanced industrialization. Mammoth machine-building plants have only too often proved disappointing, a failure that was no doubt due to the novelty of the problems raised, the lack of experience and of skilled labor, and the record-breaking speed with which agricultural Russia is being transformed into a kind of gigantic Pittsburgh.

Labor Discipline. Labor discipline has been one of the Government's chief concerns. A factor that has greatly interfered with the productivity of labor has been the continuous wandering of the workingmen from one job to another, the so-called "fluidity" of labor which assumed alarming proportions around 1930. The Labor Code (Article 46) specifically provides that a worker who has not entered into a contract for a definite term shall be free to leave his employment after serving the prescribed notice (one to seven days).[2] This provision was presumably not always observed since the Supreme Court of the U.S.S.R. found it necessary to rule at least twice (September 8 and November 14, 1936) that Article 46 was still in force and needed no further interpretation. Various measures to induce workers to stick to their jobs have been tried. Workers who remained in the same enterprise for over two years were given longer vacations and the whole structure of social insurance was so reshaped as to confer special benefits on the employees in proportion to the length of their service with an enterprise. The extra privileges thus acquired extended to bonuses, pensions, opportunities for staying at rest homes and sanatoria, and so on. Other and sterner meas-

[1] The importance of industrial labor in the population of the Soviet Union is increasing. The number of workers and employees engaged in industry was 11.3 millions in 1928, 22.8 millions in 1932 and in 1938 it reached 28 millions.

[2] The decree of December 28, 1938, requires one month's advance notice from every worker or employee who desires to relinquish his employment.

ures were applied to those workers who failed to appreciate the benefits mentioned. The decree of March 4, 1933, providing that the reason for each change of employment and the date thereof should be entered on a special labor card issued to the workers, made it a criminal offense for the director of an enterprise to hire workers not in possession of such a document. On the other hand, the communication of secret information about the character and political views of an employee was specifically prohibited and made a criminal offence by a decree of September 23, 1930. A decree of October 17, 1937, provided for the summary eviction of workers that voluntarily gave up their jobs or were dismissed for a breach of labor discipline or were convicted of a crime. The persons so evicted are not entitled to the allocation of "living space" elsewhere.[1] Unemployment insurance was discontinued in October, 1930, and the workers receive no benefit during the time they are looking for new employment.

Piece Wages. Since 1936 the wage system has been definitely based on the principle proclaimed by the Constitution "to each according to his work," that is, piece wages, a method that has always been combatted by the trade unions in capitalist countries. With the introduction of planned economy in 1928 the Government found it necessary to control retail prices, first of foodstuffs and, later, of manufactured goods, by introducing rationing. The ration cards entitled their holders to purchase, usually in a closed shop attached to the enterprise or institution in which they were employed, a definite amount of each commodity at prices considerably below those on the open market. So long as this system existed, monetary wages meant very little since real wages were determined by the assortment of goods available in the closed shops and by the prices charged, which varied within a wide range. Walter Duranty, a trusted friend of the Soviet Union, wrote in 1934 that the average monthly wage of a Russian industrial worker will buy in Moscow "on the open market no more than $3 will buy in America." [2] This state of affairs deprived monetary wages of any concrete meaning and undoubtedly contributed to the "fluidity" of labor, the workers trying to discover a factory

[1] The Soviet Union and especially the larger cities and the new industrial centers are suffering from an acute housing shortage. Every employed person is entitled to a definite "living space" the size of which varies with the locality. All dwelling houses are controlled by government owned enterprises or by the municipalities. An evicted person will find it practically impossible to find a place to live.

[2] *The New York Times,* February 4, 1934. The uncertainty of the purchasing power of the ruble during this period was undoubtedly partly responsible for the discontinuance of the publication of the index of the cost of living.

whose store would give them better value for their money. The abolition of rationing, first applied to bread on January 1, 1935, was completed by January 1, 1936. After that date all commodities were sold at State-fixed prices to whoever could afford to buy them. The reform that restored the equilibrium between monetary and real wages was an important element in the drive for higher efficiency of labor. The worker is now assured that if he earns more rubles he will be able to get more commodities, an assurance that was entirely lacking under the rationing system.

Measures of Encouragement. Various methods have been employed to spur labor to greater exertion. The most important among them are bonuses and premiums which are paid to those workers who exceed the "norm" or the standard performance prescribed for each type of work. "Socialist competition," that is, a contest for the highest productivity, is much encouraged. Honors and publicity are showered on those workers who distinguish themselves. The communist State confers upon its diligent citizens various decorations and the title of "hero of labor," distinctions that are not merely honorary since they bring with them a monthly monetary payment (from 10 to 50 rubles), exemption from certain taxes, reduction of rent, free use of street cars, special privileges with reference to pensions, social insurance, etc. A "hero of labor," moreover, cannot be summarily evicted unless he is provided with adequate "living space" elsewhere and means for moving to new lodgings. A much publicized drive for greater labor efficiency, the Stakhanov movement, was named after the miner Stakhanov who in August, 1935, knocked down 102 tons of coal in six hours, a feat for which he earned 225 rubles. Stakhanov immediately became a national hero, his example was emulated by ambitious workers in other branches of industry, and the name of Stakhanovite became attached to the more efficient workers who, in the past, had been known as "shock workers." That the Stakhanov movement actually brought about a lasting improvement in the productivity of labor canot be stated with any degree of assurance; indeed, such an improvement appears highly dubious, official optimism notwithstanding.[1] The

1 A decree of March 11, 1939, issued by the Economic Council, an agency of the Council of People's Commissars, reveals an instructive picture of the conditions prevailing in the building industry. "The Economic Council . . . ," says the decree, "hereby declares that compliance with the instructions of the Party and of the Government concerning the improvement in the organization of labor in the building industry continues to be unsatisfactory with the result that in a number of building projects the prescribed 'norms' remain unfulfilled. Workers employed on building projects not infrequently work only five or six hours per day; the

Stakhanov movement was given as the reason for issuing on December 25, 1935, a decree that ordered the upward revision of the "norms" in every branch of economic activity. Since the standard wage is conditional on the fulfilment of the "norm" (which applies to both quality and quantity) those who fall below the "norm" receive less than the standard wage. It has been officially stated that the increase in the "norms" has brought about a rise in wages but it was not made clear how this result could be achieved by paying the workers the same wage for doing more work.[1]

Punitive Measures. Soviet legislation supplies a long list of involved and often repetitious measures for the enforcement of labor discipline and the discouragement of laxity and negligence. Only a few of them can be noted here. A decree of November 15, 1932, provided that a one-day absence from work without good reason should be punishable by dismissal accompanied by eviction and the cancellation of the ratio card.[2] The "malicious breach of labor discipline" brings immediate dismissal as well as criminal prosecution (decree of December 17, 1930). At the end of 1938 the drive for labor discipline was renewed with much force. A regulation was adopted stipulating that from January 15, 1939, every worker should be provided with a "labor booklet" containing a full record of his professional career, including statements of the reasons why he had left his previous place of employment, a measure designed further to discourage the migration of labor. A decree of December 28, 1938, provided that a worker who was late three times in one month or four times in two consecutive months must be dismissed; that vacations should be given only to the workers who have been employed for eleven consecutive

balance of their time is wasted chiefly because the ground is not prepared, building materials are not delivered on time, and coordination among various operations is lacking. The Economic Council of the Council of People's Commissars considers as intolerable a situation when individual directors of building projects, instead of striving for the improvement in the organization of labor, the liquidation of enforced idleness, and the increase of the amount of work performed (*uplotnenie*), have entered the road of covering up the deficiencies by illegal payments for work not actually done (*namazki*) thus artificially raising wages and concealing the inadequate organization of labor at a heavy cost to the State." The decree quotes an instance when the illicit over-payment of wages in 1938 was as high as 101 per cent. The Economic Council ordered the discontinuance of the illegal practice and directed the Attorney General to institute legal proceedings against the guilty officials.

[1] The upward revision of the "norms" has been repeated since. For instance by a decree of January 5, 1939, they were increased in the machine-building industry by 25 per cent and the standard piecework wage was decreased by 14 per cent.

[2] The latter provision, of course, was no longer applicable after the abolition of rationing.

months in the same institution; and that the amount of social insurance received in case of temporary disability should depend on the length of employment. Benefits to expectant mothers were drastically reduced to cut down abuses, which were reported to have been frequent. On January 8, 1939, the Government issued an order to dismiss in the future any workers more than twenty minutes late on any working day. A number of spectacular and much publicized trials were staged in Moscow early in 1939. The defendants, workers who had committed offences against labor discipline and the supervisors and managers who had tolerated these infringements, were branded as enemies of the people and received heavy sentences.

Trade Unions

Functions of the Trade Unions. The functions of the trade unions under the dictatorship of the proletariat differ considerably from those of similar organizations in the capitalist countries. Their position and the character of their activities is determined by the theory that the Soviet Union belongs to the workers and peasants and that therefore the interests of the State and those of labor are identical.[1] The trade unions play a part in the management of Soviet industry. Their membership is very large, since it is practically mandatory for every industrial worker to belong to a trade union, and they have at their disposal considerable funds composed of contributions paid by the members at the rate of one per cent of their total earnings. The trade unions form a vast administration which has as its base the shop committees elected in each industrial enterprise and at its head the All-Union Council of the Trade Unions elected by the All-Union Congress of the Trade Unions. In 1933 the entire work of the former People's Commissariat of Labor was transferred to the trade unions which thus became the executive agency for social insurance and relief. One of the official duties of the trade unions is the conclusion of collective labor contracts, although the necessity of such contracts is not obvious since wages, labor conditions, and hours of work are regulated by the State and the trade unions never question the wisdom of official decisions. It

[1] A similar theory underlies the organization of the *Arbeitsfront* (Labor Front) in National-Socialist Germany and, in a somewhat different form, that of the syndical structure in the Italian Corporate State. The veteran Russian revolutionary and trade-union leader, Michael Tomsky, made an attempt to ascertain the independence of the labor organizations from the State. He committed suicide during the great purge and has since been denounced as a traitor.

appears that in practice the trade unions have often neglected to conclude collective contracts.[1] The other functions of the trade unions are as follows: to provide for the educational, recreational and other needs of the workers; to improve housing conditions; to promote safety measures; to co-operate with the management and the local agencies of the Communist Party in promoting labor discipline, in encouraging "socialist competition," especially the Stakhanov movement, to strive for the fulfilment and the overfulfilment of the plan. In other words the trade unions which, like every organization in the Soviet Union, are controlled by the "leading nucleus" of the Communist Party, are hardly more than another vast agency for fostering the general objectives of the socialist State. The chief emphasis in recent years has been on their work in promoting labor discipline and efficiency.

Conditions in the Trade Unions, 1937. It is perhaps not surprising that the trade unions have shown a lack of enthusiasm for a policy which, whatever may be its benefits in the future, imposes no small hardship on their members at present. A resolution adopted by the sixth plenary session ("plenum") of the All-Russian Council of Trade Unions in 1937 presents a bitter indictment of the conditions prevailing in the labor organizations. According to the resolution the trade unions have been invaded by the "enemies of the people" and the labor leaders have displayed "intolerable political blindness, tardiness and levity" in detecting the criminal activities of the "wreckers." The intra-trade union "democracy" has been completely neglected and all questions have been decided by the presidents and secretaries without consulting the members.

> "The general meetings of the trade unions are summoned but seldom, they are poorly organized, are unbusinesslike and merely 'formal-declarative' in their character. The decisions are frequently not carried out, there is no control over their execution. . . . The administration of social insurance is carried on by bureaucratic methods, the members of the trade unions do not participate in this work, have no control over the distribution and use of the social insurance funds. This situation has made it possible for all sorts of swindlers, chiselers, and enemies of the people to invade the administration of social insurance, to use the funds improperly, to squander and embezzle millions of rubles. . . . The trade unions have frequently paid no attention to the complaints of the workers, employees, engineers and technicians who pointed out criminal viola-

[1] The sixth plenary session ("plenum") of the All-Union Council of Trade Unions held in 1937 specifically directed the trade unions "to resume the practice of concluding collective contracts."

tions of labor legislation, and the non-observance of safety measures. . . . The trade unions have greatly weakened the drive for mass production, have failed to lead in the organization of 'socialist' competition and the Stakhanov movement. . . . The Presidium of the All-Union Council of the Trade Unions is proceeding by purely bureaucratic methods, is invariably late in deciding the most pressing questions of the trade union movement. . . . The majority of the members of the central committees of the trade unions are not familiar with the conditions in the enterprises, they do not know and do not try to learn what are the interests of the membership, show no desire to discuss the questions vital to the workers."

The resolution outlined a program directed to the improvement of the work of the trade unions and the democratization of their methods (new elections of trade union organs from below, secret ballot, voting for individual candidates instead of lists of candidates, responsibility of the elected officers to the bodies that elected them).

Conditions in the Trade Unions, 1938. The seventh plenary session of the All-Union Council of Trade Unions held in August, 1938, passed a resolution dealing with the execution of the program of the sixth plenary session. This resolution offers a typical example of official optimism and "self-criticism" which an outside observer finds it difficult to reconcile. The resolution noted improvement in the work of the trade unions but then declared that "the trade unions have failed to carry into effect the most important decisions of the sixth plenary session" especially those dealing with the daily needs of the workers and the betterment of production. The conditions of workers' dining rooms, of housing, supply organizations, hospitals, day nurseries, kindergartens, etc., were reported to be highly unsatisfactory, with little progress shown in the field of labor protection and the promotion of safety. It was stated that bureaucratic procrastination and the personal rule of trade union presidents and secretaries had not been eradicated, and the resolution noted instances of "aloofness of the trade unions from the masses," of "a bureaucratic, heartless attitude toward the vital needs and requirements of the membership."

Conditions in the Trade Unions, 1939. The resolutions of the eighth plenary session of the All-Union Council of Trade Unions held in April, 1939, dealt largely with the promotion of efficiency and the strengthening of labor discipline. It is the duty of the trade unions, a resolution declared, to see to it that every worker performs his "norm." The plenary session noted that "so-

cialist competition" continued to be organized "from above," "by purely bureaucratic methods"; that the organization of labor in a number of enterprises was highly unsatisfactory; that trade unions displayed a regrettable laxity in enforcing the rules laid down in the decree of December 28, 1938; [1] that they took little interest in settling questions of wages and in advancing the welfare of the workers.

"The trade unions are fully equipped to meet the cultural needs of the toilers and to provide them with recreation facilities (6,000 clubs, and 'palaces of culture,' 15,000 libraries, 100,000 'red corners,' 1,800 radio sets, over 10,000 moving picture installations). These facilities, however, are only too often insufficiently used. A number of clubs, 'palaces of culture,' and 'red corners' are not properly taken care of, premises are uncomfortable, the necessary cultural atmosphere is lacking. For instance, the 'Palace of Culture' of the Union of Southern Railroads, in Kharkov, instead of being a model cultural institution and a favorite place for recreation, is sadly neglected and untidy."

The eighth plenary session reiterated the resolution of the sixth plenary session prohibiting the voting in trade-union elections for lists instead of individual candidates. It is highly characteristic of Soviet conditions that the resolutions strongly emphasized the necessity of studying Stalin's report to the eighteenth congress of the Communist Party and the new *History of the Communist Party of the Soviet Union* [2] as the best method for improving the educational levels of the workers.

Reasons for the Apathy of Organized Labor. The avowed apathy of organized labor in the Soviet State is probably best explained by the subordinate position held by the trade unions among the agencies that share in the administration of industry. There are three of them in every industrial enterprise: (1) the appointed director who is fully responsible for the conduct of the enterprise and may dismiss any worker or employee (such a decision is put into effect at once although it may be appealed by the shop committee or by the local organization of the Communist Party); (2) the primary organ of the Communist Party whose duty it is to provide for the effective leadership in all "social, political and economic activities of the enterprise" and to ensure their conformity with the policies of the Party; and (3) the shop committee elected by the workers, an agency of the

[1] See above, pp. 892-893.
[2] See below, p. 914.

trade unions.[1] The trade union leaders usually refrain from interfering with the local Communist organizations or with the decisions of the director who is either a party member or a "non-Party Bolshevik," unless the desirability of criticism is hinted from above. The principal function of organized labor, in addition to the administration of social insurance, is to drive its members toward higher efficiency, a distasteful task for which trade unions show as little enthusiasm under socialism as they do in a capitalist enterprise. The rapid increase in the number of industrial workers and the steady influx of men and women to whom the tradition of the trade union, which has hardly any root in Russia, is alien are other factors that help to an understanding of the weakness of Soviet labor organizations. They have little in common with trade unionism as it is understood in Western European democracies and in the United States. It is for this reason that the International Federation of Trade Unions has repeatedly declined to admit Soviet trade unions to membership.

Evolution of Agricultural Policies

Results of the Agrarian Revolution of 1917-1918. The evolution of Soviet agrarian policy has been relatively simple. Private ownership in land was abolished by a decree issued by the Soviet Government immediately after it rose to power. Having no agrarian program of their own the Bolsheviks borrowed from the Socialist Revolutionary Party its program of socialization of land. This plan was soon to give place to an attempt to apply the rigid centralized control of agriculture inaugurated during the period of War Communism.[2] While the latter policy with its ruthless requisitions of grain and exploitation of the peasantry led to violent uprisings, the former achieved its political objectives: the large landed estates of the Church and the nobility were divided among the peasants, thus fulfilling the secular dream of the downtrodden Russian farmer. The immense driving force of the agrarian revolution had been effectively harnessed in the service of the newly born socialist State. The economic and social aspects of the agrarian revolution were far less satisfactory from the Marxian point of view. The immense majority of the former private landed estates were parcelled out among the peasants and were admin-

[1] Decree of September 5, 1929, reprinted in the collection of labor legislation published in 1938.

[2] See above, pp. 836-837.

istered by the methods of the antiquated and primitive Russian land commune, or *mir*. This form of tenure vested control of the land of a village in the general assembly of house elders who divided agricultural land among the households either on the basis of the labor power of the household or on that of the number of people deriving maintenance from it. The inherent drawback of this form of tenure is the inter-mixture of strips [1] which leads to compulsory rotation of crops (usually the primitive free-field system) and makes extremely difficult the adoption of better methods of cultivation. The equalitarian principle on which the *mir* is based requires the periodical redistribution of land among the members of the community and this, again, weakens the stimulus to take proper care of the land since there is no assurance that any particular strip will not pass into other hands at the next redistribution. It was toward the abolition of this perverse form of tenure that the land reform of Stolypin was directed.[2] By 1920 the old-fashioned communal land tenure was restored in the entire territory of the country. A certain leveling in the size of peasant holdings took place as a result of the revolutionary redistribution of land, and, as a Soviet economist put it, the whole of Russia became "the petty bourgeois realm of small peasants." Under the New Economic Policy the farmers were left more or less alone and were permitted to sell a large portion of their produce in the open market. The Government, true to the Marxian doctrine of class struggle, divided the farmers into "poor" peasants, "medium" peasants, and the *kulaks* [3] or well-to-do peasants. The "poor" and the "medium" peasants were regarded as supporters of socialism, while the *kulaks* were classed among its enemies. This distinction, however, did not become of vital importance until the great drive for collectivization in 1929. The rural community being inherently conservative the more enterprising farmers managed to hold their own and even to improve their economic status so long as they were free to sell much of their produce in the market.

[1] Land being of unequal quality the entire holding of a village was divided into fields and the fields into strips of which each household received its allotted number. In certain cases the number of strips farmed by a householder ran as high as 30 or 40.

[2] See above, pp. 790-791.

[3] *Kulak* means fist in Russian and was colloquially applied before the revolution to well-to-do peasants who exploited their weaker neighbors. A *kulak* was usually the keeper of the village inn and the village money-lender. No definition of a *kulak* was provided by Soviet law, except that a farmer employing hired labor must be classed as a *kulak*. The village Soviets were given wide powers to determine for themselves who were the *kulaks*.

Socialist Reconstruction of Farming. The idea of reconstructing agriculture along socialist lines, however, was never abandoned by the Soviet leaders. Beginning in 1918 attempts in this direction were made with the establishment of the *sovkhoz* or State-owned agricultural enterprises, and the organization of the farmers into *kolkhoz* or collective farms, on a co-operative basis. Two important advantages are claimed for large scale socialist agricultural enterprises. They make possible the use of intensive methods of farming and the employment of improved machinery, such as tractors and combines. They tend to minimize the psychological differences between industrial workers and farmers and especially to reverse the "petty bourgeois" attitude of the latter. The failure of the early attempts to establish State and collective farms has since been explained by the lack of the necessary prerequisite—agricultural machines. The policy to be followed toward the farmers was a source of much dissension within the Communist Party in 1924-1928. The first Five Year Plan provided for a comprehensive program of collectivization which, it will be recalled, was greatly exceeded.[1] The very unsatisfactory results of the State grain collection in 1928 probably had something to do with the speeding up of collectivization. The *kulaks* were held responsible for the failure of the collection program and they were "liquidated as a class," that is, they were deported to remote regions and put to work in the lumber camps and on the construction projects of the dreaded GPU. The actual number of the deportees has not been disclosed but it is believed to have been somewhere between four and five millions. After application of this coercive measure the collectivization of farming proceeded without much opposition, although not without considerable friction. By the end of the second Five Year Plan almost 100 per cent of the farming was in the hands of the Soviet farms or collective farms.

State Farms

Organization of the State Farms. The *sovkhoz* or Soviet farm is a large State-owned and State-managed agricultural enterprise cultivated by hired labor. In establishing State farms the Government had two objects in view: (1) to increase agricultural production by using better methods of husbandry and by extending the area under crops; and (2) to create model agricultural centers which would provide the peasant farmers with an object

[1] See above, p. 870.

lesson in the advantages of large scale farming and thus lead them along the path of socialism. The State farms, which specialize in various branches of agriculture and animal husbandry, were in the earlier days fondly spoken of as "grain factories," "meat factories," etc. Little progress was made with the organization of State farms until 1928 when a comprehensive and ambitious program for their development was adopted. The Soviet leaders were suffering at the time from what is today scornfully described in the U.S.S.R. as "gigantomania," that is, the firm and naïve belief that the larger the size of an enterprise the greater are its chances of success. In 1930 the average area of a State grain farm reached the imposing figure of 116,000 hectares.[1] The structure of the agencies in charge of the State farms has been altered several times, but since 1936 they have been under the control of the federal People's Commissariat of State (Soviet) Grain and Livestock Farms and of the corresponding People's Commissariats of the constituent republics. A State farm is managed by an appointed director clothed with full authority. Labor is paid on a piecework basis. Each laborer is permitted to keep, as his private property, one cow, one calf or goat, and one pig, but he is specifically debarred from owning draft animals—horses, oxen, camels (decree of September 30, 1938). The decree of February 7, 1937, provided for the establishment on the State farms of a "director's fund" similar to those of the industrial enterprises. Every farm receives an assignment under the plan, and the "fund" benefits through savings on the planned costs.

A Disappointing Experiment. The practical management by the State of huge agricultural enterprises presented difficulties which were both unforeseen and disappointing. The yield of crops on the State farms was consistently below the average for the country as a whole and the mortality among the livestock just as consistently high. There were frequent changes in the higher personnel and labor was in a state of flux. Stalin admitted in his speech to the seventeenth congress of the Communist Party in 1934 that there was a "great discrepancy" between the results obtained and the vast investment engulfed by the State farms. Beginning with 1935 the government proceeded to disband many of the State farms, transferring the land to the collective farms. The sown area of the State grain farms declined from 16 million hectares, or 12.1 per cent of the total sown area in 1936, 12.1

[1] One hectare—2.47 acres.

million hectares, or 8.9 per cent in 1938. That is, it was reduced by 25 per cent.[1] Another important recent development has been the breaking up of the State farms into smaller units. The whole experiment has belied expectations and has admittedly failed to achieve its objectives.

Collective Farms

Progress of Collectivization. The *kolkhoz* or collective farm is the prevailing form of agricultural enterprise in the Soviet Union. According to the plan for 1938 the sown area of the collective farms amounted to 90.2 per cent of the total sown area. Collectivization, like everything else in the U.S.S.R., was carried on at record-breaking speed. On July 1, 1927, there were fewer than 15,000 collective farms with a membership constituting less than 1 per cent of the peasant population. By April 1, 1936, the number of collective farms had increased to 243,600 and included 89 per cent of the total number of peasant households. By the end of 1938 18.8 million peasant households, or 93.5 per cent of the total number, were members of the collective farms.

What is a Collective Farm? A collective farm is, in theory, a voluntary co-operative association for the cultivation of land. The legal status and organization of the collective farms and the rights and duties of their members are determined by the "Model Charter" of the Agricultural *Artel*[2] of February 17, 1935, and by Articles 7 and 8 of the Constitution. Each collective farm has its own "freely" adopted charter which invariably follows closely the "Model Charter." Although the land occupied by the collective farms is "public socialist property" the farms have the use of land in perpetuity, that is forever. This right is confirmed by Article 8 of the Constitution. Land cannot be sold or leased. The land, buildings, livestock and implements of a collective farm are divided into two categories. Agricultural land, buildings used for communal purposes, agricultural machines and the more important implements, draft animals, and stocks of seeds constitute

[1] The 1938 figure is that of the plan for that year.

[2] The Law of February 14, 1919, and the Land Code of December 1, 1922, which superseded it, recognized three types of collective farms: the commune, the *artel*, and the association for the joint cultivation of land. The difference between them is in the degree of collectivism which is strongest in the commune and weakest in the association. In 1933, 96 per cent of the collective farms were of the *artel* type which is officially recognized as the most suitable at the present stage of development. The present discussion deals exclusively with the farms of the *artel* type.

the "public socialist property" of the collective farm. Members of a collective farm, however, retain under their individual control their homesteads with an adjoining plot the size of which varies from one-quarter to one hectare, small implements, and some livestock (usually one cow, two calves, one or two sows, up to ten sheep or goats, an unlimited number of poultry and rabbits, and up to twenty bee-hives). These items constitute the individual property of the collective farmer. The distinction between the two kinds of property is sanctioned by Article 7 of the Constitution.

Membership. Membership in a collective farm is open to all citizens, both male and female, who have reached the age of sixteen. The descendants of disfranchised persons and the *kulaks* and members of their families, who formerly were not eligible, have, since 1936, provided they are in good standing with the Government, been permitted to join collective farms. Each member pays an admission fee which varies from 20 to 40 rubles. From one-quarter to one-half of the property he brings to the collective farm (animals, implements, buildings, etc.)—for he is always a former local individual farmer—is added to the "indivisible fund" of the farm, while the balance is credited to him as his contribution to the share capital. The property absorbed in the "indivisible fund" is not returned to the member if he leaves the farm.

Administration. The administration of collective farms is based, in theory, on equality and democracy. The chief administrative body is the general assembly of members which elects the president, the executive board, and the control committee. The president who can be and in practice often is an outsider is the chief executive officer of the farm. He is assisted by the executive board which is elected for two years and must meet at least twice a month. The control commission is required to keep a close check on the financial and economic activities of the executive officers and especially to ensure the fulfilment by the farm of its obligations toward the State.

Organization of Labor. Cultivation of the collectivized section of the farm is carried on jointly by the members who are organized into brigades under the command of an appointed brigadier, who is also a member of the farm.[1] On the grain farms brigades are organized for the full period of the rotation of crops,

[1] The organization of labor into brigades is also prevalent on the State farms and in industrial enterprises whenever this is feasible.

are supplied with animals and implements and are put in charge of a definite area of land. The brigades, usually 40 to 60 strong, are sometimes subdivided into smaller units, "links" (*zveno*). The brigadier assigns his men to various tasks and is responsible for the work of the brigade. The collective farmers are paid in kind and also in money, their earnings being computed on the basis of "labor days." The "labor day" is an abstract unit which comprises the elements of physical exertion, skill, and the "social usefulness" of the work. The Government issued in 1933 elaborate lists in which various types of agricultural work were evaluated in terms of "labor days." A decree of February 28, 1933, divided all types of farm work into seven classes. A day's work in the highest class (president of a collective farm, tractor driver) was worth two "labor days," while a day's work in the lowest class was counted as only one half of a "labor day." Each collective farm is free to devise its own scale of payments in "labor days" but official models are usually followed. In determining whether a "labor day" has been actually earned both the quality and the volume of the work must be taken into consideration. There is an elaborate system of premiums for the brigades and individual laborers who exceed the standard requirement, and of deductions for those who fail. The brigadiers share in both and have good reason to drive their men hard and fast. The work of each member of a brigade is entered in terms of "labor days" at least once a week in his personal booklet by the brigadier. At the end of the year the net earnings of the farm both in kind and in cash are distributed among the members on the basis of the number of "labor days" credited to them.

Strictness of Administrative and Judicial Controls. The assignment of a collective farmer to any particular kind of work, a matter of the greatest importance from the point of view of his earnings, is entirely in the hands of the administration of the farm. Negligence, laxity, or refusal to work brings summary punishment which varies from reprimands, fines, transfers to a lower pay group, or suspension from work to expulsion from the farm. If refusal to work is deemed to have been inspired by counter-revolutionary motives it falls under Article 58 [10] of the Criminal Code. In case of conviction the sentence may be anything from six months' imprisonment to death by shooting. Capital punishment is also the highest penalty for collective farmers convicted of crimes against "socialist property."

Machine Tractor Stations

Mechanization of Agriculture. Mechanization of agriculture has always been considered by the Soviet leaders as one of the primary conditions of successful collectivization of farming, even though Stalin in a speech delivered on December 27, 1929, advanced the idea that the mere pooling of rudimentary peasant implements and draft animals would result in a great increase in productivity and expansion of acreage under crops. On October 1, 1927, Soviet agriculture had less than 25,000 tractors of which 37 per cent were owned by the collective farms, 19 per cent by the State farms, 26 per cent by individual farmers, and 18 per cent by agricultural co-operative associations. All tractors were of foreign make, the majority manufactured in the United States. In 1938 the number of tractors had increased to 483,500, while the number of combines increased from 25,000 in 1933 to 153,500 in 1938. The Soviet Union, moreover, no longer buys her agricultural machines abroad; they are all produced by Russian factories.

Functions of the Machine Tractor Stations. Since 1930 the ownership of tractors, combines and other agricultural machines has been concentrated in the hands of the State and practically all of them in 1939 belong either to the State farms or to the machine tractor stations, the latter having by far the larger share. The machine tractor station is the most important government agency for the control and direction of agriculture. Every station is headed by a director who has two groups of assistants: (1) engineers, mechanics and agronoms whose duty it is to enforce the fulfilment of the plan and to promote the efficiency of farming, especially of the collective farms; and (2) (since 1933) a "political department" which serves as the Party's "eye and control" and concerns itself with the political education of the people and the elimination of the enemies of the regime. It is one of the objectives of the Soviet Government that every agricultural enterprise shall be served by a machine tractor station. The number of these stations jumped from 158 in 1930 to 6,350 in 1938. The third Five Year Plan appropriated 5.2 billion rubles for the further development of the network of the machine tractor stations. Collective farms, which are compelled to avail themselves of their services, enter with the stations into contracts the terms of which are regulated by law and, in return for the work done by the station, surrender to it a definite part of their agricultural produce and sometimes also make payments in cash. Until

1938 the machine tractor stations appear to have enjoyed a certain financial autonomy within the framework of the plan. The decree of February 5, 1938, however, proclaimed that their financial organization had been defective, had resulted in the "freezing" of State funds, and had encouraged squandering and laxity. From January 1, 1938, the machine tractor stations have been financed exclusively by budget appropriations. The payments (both in kind and in cash) received from the collective farms is handed over to the Government.[1] The directors of the stations, nevertheless, continue to be personally responsible for the timely delivery by the collective farms of the payments in kind due for the services rendered to them. The decree also introduced an elaborate system of premiums for efficient work, fulfilment and over-fulfilment of the plan, and especially for a reduction in costs.[2]

Taxation of Agriculture

Compulsory Deliveries in Kind. Farmers are subject to various levies and taxes which provide the bulk of Soviet revenue. The most important and onerous of government levies is the obligation to surrender a portion of agricultural produce to the State at prices far below those paid by consumers. Until 1932-1933 the amount of agricultural commodities to be delivered was established by a "contract" between the farmer and a State agency. The amount of the compulsory purchase and the price being fixed by the Government the whole procedure amounted often to requisition and removed all incentive to higher production. In 1932-1933 this method was abandoned and the levy assumed the form of a specified amount of grain per hectare of the sown area. The new method has the advantage of fixing in advance the obligations of the farmers thus giving them the incentive to produce more since they are now permitted to dispose of the balance of their harvest at more remunerative prices. Compulsory delivery

[1] In his report to the Supreme Soviet on August 10, 1938, the People's Commissar for Finance, A. Zverev, stated that "the absence of [financial] control had as its consequence heavy losses suffered in 1937 by the machine tractor stations and the Soviet farms." In his report to the same body on May 25, 1939, M. Zverev again deplored the inefficiency of the leaders of the machine tractor stations. Their laxity, according to the Commissar for Finance, necessitated in 1938 outlays in excess of budgetary appropriations running into several hundred million rubles. It was announced, nevertheless, that the machine tractor stations contributed 1.4 billion rubles to the State budget in 1938, and the anticipated receipts from this source were put at 2.3 billion rubles in 1939 and 2.6 billion rubles in 1940.

[2] The method of payment of the machine tractor stations personnel has been revised since, for instance, by the Decree of March 8, 1939.

to the State of a part of the produce at nominal prices applies to all agricultural commodities (grain, sugar-beet, flax, butter, milk, meat, etc.) and is obligatory for both the collective and individual farms, although the share of the latter is always higher.[1] Another form of government levy is payment in kind for the services of the machine tractor stations.

Fiscal Burden of the Farmers. The actual burden imposed by the deliveries in kind upon the farmers will be gathered from the fact already mentioned that in 1937 the revenue of the Committee (now People's Commissariat) for the Purchasing of Agricultural Products (which is the collecting agency) was 24.1 billion rubles, while another 20.4 billion rubles were contributed to the State revenue by the People's Commissariat of Food Industry. The entire revenue of the Union in 1937 was 96.6 billion rubles. The bulk of the deliveries in kind came from the collective farms. The provision of Article 8 of the Constitution that collective farms shall enjoy the use of their land "without payment" is, therefore, only formally true: officially they pay no rent but for all practical purposes compulsory deliveries at nominal prices are equivalent to rent, a rent that is much higher than anything known in the capitalist countries. It is only fair to add, however, that the large financial sacrifices made by the farmers do not contribute to the revenue of capitalist landowners, but are invested by the State in its vast program of economic development.

Other Taxes. In addition to the deliveries in kind the farmers pay in cash both an agricultural tax and a special tax for the cultural and housing needs of the rural districts. In 1937 the yield of these taxes was estimated at 1.2 billion rubles. Taxation in all of its forms has been used as a powerful method of fostering collectivization. The tax burden of the individual farmers has been invariably much higher than that of the collective farms and in the case of the *kulaks* it has been definitely confiscatory.[2]

[1] A decree issued by the Council of People's Commissars on April 7, 1940, introduced radical changes in the method of determining the quantities of compulsory deliveries. The basis of assessment in the past was the acreage of sowings and the size of the herd. This basis has been abandoned and the decree provided that in the future compulsory deliveries will be determined by the total acreage held by a farm. The existing system, according to the preamble to the decree, was obsolete, it put a premium on inefficiency and discouraged collective farmers from bringing new areas under cultivation and from breeding domestic animals. The new method, it is held, will encourage both grain farming and livestock breeding. The old system, however, was retained for cotton, tobacco, fruits, and berries.

[2] The Law of August 21, 1938, may serve as an illustration. It provided for a tax on horses owned by the individual farmers. The rate of the tax varies, accord-

The Results of Collectivization

The Balance. The time has not yet arrived for a final appraisal of Soviet collectivization. The experiment is too novel and many of its essential features are not yet sufficiently known to offer ground for a clear-cut verdict. It may be plausibly argued that the substitution of large scale mechanized farming for the tiny holdings, scattered strips and primitive implements of pre-Revolutionary Russia is a definite and important step forward. Those critics of communism who are bent on idealizing the conditions of the Russian village under the Tsars will do well to read Ivan Bunin's remarkable stories, "The Village" and "The Dry Valley." It is just as difficult, however, to condone the methods by which collectivization was brought about. The "liquidation of the *kulaks* as a class" is one of the most horrible persecutions in postwar history, exceeding in brutality even the treatment inflicted upon the Jews in National Socialist Germany. Collectivization, moreover, was accompanied by a catastrophic slaughtering of domestic animals, the prospective collective farmers disposing of their livestock before joining the collective farm. This depletion of livestock has inflicted upon agriculture losses from which it will take years to recover.[1] The extravagant and seemingly unnecessary speed of mechanization has led to an immense wastage of machines and human energy. Stalin himself admitted in his speech to the seventeenth congress of the Communist Party in 1934 that tractors and combines had been hopelessly mishandled. There has been some improvement since, but the situation is still far from satisfactory and the yield of crops, as far as can be judged from incomplete and contradictory statistics, shows

ing to the locality, from 275 to 500 rubles on the first horse, and from 450 to 800 rubles each on all other horses. The payment of the tax was due on October 15, 1938, and every individual farmer who owned a horse on August 21 was liable to the tax even if he had disposed of his horse at once. But if he joined a collective farm before October 15 the payment was waived. The rates of the tax were definitely confiscatory. The reason for this characteristic piece of legislation, according to the official explanation, was the complaints of unnamed collective farmers that individual farmers use their horses "for speculative purposes." That humble, downtrodden creature, the peasant horse, thus found itself unexpectedly classed among the awe-inspiring instruments of capitalist exploitation.

[1] The effects upon the livestock of the drive for collectivization which started in 1929 and the degree of recovery achieved since will appear from the following official figures:

	1916	*1928*	*1933*	*1938*
		(IN MILLIONS)		
Horses	35.8	33.5	16.6	17.5
Large horned cattle	60.6	70.5	38.4	63.2
Sheep and goats	121.2	146.7	50.2	102.5
Pigs	20.9	26.0	12.1	30.6

little tendency to increase.[1] The basic difficulty in agriculture is the same that we have observed in large scale industry: lack of organizing experience and of technical skill, stifling bureaucratic methods, and the vagaries of "planned economy." It of course takes time to turn a Russian peasant lad, who has never seen a car, into a tractor driver. Stalin declared, and his statement has become one of the nation's slogans, that it is the purpose of the Soviet Government to make every farmer "well-to-do" (*zazhitochnim*). Whether the standards of living of the peasantry are higher or lower than they were before the War is a controversial question to which no definite answer can be given, but it is certain that they are strikingly below those in western European countries and in the United States. It may be argued with some justice that the defects just mentioned are merely "pangs of growth," that the Soviet experiment is still young and that provided the organization of agriculture it has created is fundamentally sound it will in due course prove its superiority over individual capitalist farming.

Is Collective Farming Superior to Individual Farming? This brings up the most difficult question of all: is a collective farm inherently superior to an average capitalist individual farm? The former has the advantage of a larger size and, if and when the Soviet mechanics and agronoms master the technique of intensive agricultural methods, it will probably have a better equipment. This day, however, is still remote. In the meantime the farm managers and brigadiers are struggling under the threat of heavy penalties for failure to meet the often exorbitant demands of the plan and they are snowed under by a mass of reports, some of them very complex and most of them highly "urgent." The rank and file of the collective farmers are completely in the hands of local bosses on whose pleasure depends their livelihood, and sometimes their freedom and even their lives, for crimes against "socialist property," it will be recalled, may be punished by death. On April 19, 1938, the Council of People's Commissars and the Central Committee of the Communist Party issued a joint decree which disclosed an amazing picture of the conditions prevailing on the collective farms. The "Model Charter" specifically pro-

[1] Stalin stated in his report to the eighteenth congress of the Communist Party that the total yield of grain in 1938 was 118.6 per cent of the yield in 1913, while the area under grain increased in 1938 to 108.5 of the 1913 figure. The improvement in the yield of grain crops therefore was anything but striking and the advantages claimed for the collective farms remain to be proved. It must also be remembered that the size of the population has presumably increased since 1913.

vided that no member of a collective farm could be expelled except by a decision of the general assembly attended by at least two-thirds of the members. The decree pointed out that this rule had been frequently disregarded. Members had been expelled in large numbers and for no good reason.

"Practice has proved that the executive boards and the presidents of the collective farms . . . are the chief perpetrators of illegal actions. . . . The leading county (*rayon*) Party and Soviet officials . . . display a heartless bureaucratic attitude toward the fate of the collective farmers, ignore the appeals of those who were illegally expelled, take no measures against officials guilty of violating the rights of the collective farmers. . . . Even more, these higher Party and Soviet officials themselves push the presidents and the executive boards of the collective farms into the road of illegal expulsion of the members under the banner of cleansing the collective farms of socially-alien and class-inimical elements."

The decree rightly stated that such policies "foster discontent and bitterness among the expelled farmers, and make the members uncertain of their position on the farm." The decree also provided that the regulations of the "Model Charter" must be observed, that members must not be expelled for minor offences, and it made the infringment of this rule a criminal offense. In the light of past experience it may be doubted whether this and similar measures will succeed in curbing the zeal of local bosses and in restoring the shattered morale of the collective farmers. The amendment of the Communist Party charter adopted in 1939 extended the role of the primary party organs and the Organization of Communist Youth in the control of the collective farms.[1] This provision will probably aggravate the conditions that the decree of April 19, 1938, so rightly deplore. Great as are the advantages of large-scale mechanized agriculture the whole structure of collective farms appears to be fundamentally vicious. Whether farming can develop and prosper under a regime so arbitrary, capricious and ruthless remains highly uncertain.[2]

[1] See above, p. 831.

[2] On May 27, 1939, the Central Committee of the Communist Party and the Council of People's Commissars of the U.S.S.R. issued jointly an interesting decree which throws much light on the attitude of some of the farmers toward collectivization. Although there is nothing in the Constitution or the Soviet law to justify joint legislation by the Party and the Government the practice is by no means uncommon. The decree is entitled "On Measures for the Protection of the 'Public' Land of the Collective Farms from Spoilation (*razbazarivanie*)". According to this authoritative statement the collective farmers had frequently expanded the acreage under their individual control in excess of the norms stipulated in the "Model Charter" (see above, p. 902). "As a result of this practice directed against the col-

Trade, Banking, Transportation, and Housing

The control by the State of other branches of economic activity must be briefly mentioned. The monopoly of foreign trade was established in April, 1918, and has been maintained ever since.[1] Domestic trade, which during the period of the New Economic Policy was to a large degree in private hands (this is true only of retail trade), has since been completely taken over by the State and is concentrated in government-owned stores and in those of the consumers' co-operative organization which does not differ essentially from a State agency. Banking was nationalized in December, 1917, and the various Soviet banks are largely paying agencies under the plan. Their functions differ considerably from those of similar institutions under capitalism. Railroads, shipping, post, telegraph, telephone, and public utilities are all under State management. The last refuge (except for government bonds) of private investors, the co-operative societies for the building of dwelling houses, was liquidated by the Decrees of October 17 and November 25, 1937, and the properties were

lective farms and the State," says the decree, "the interests of the communal economy of the collective farms based on joint cultivation of land are being sacrificed to the interests of the property-minded, anti-social (*rvachi*) elements who use collective farms for speculation and personal enrichment." The decree complains that in a number of collective farms the individual allotments of the members had become for all practical purpose their private property over which the administration of the farm exercises no control. Abuses were facilitated by the hopeless state of confusion and disorder prevailing on such farms: parcels of land under individual and collective management were frequently intermixed; there were no clear boundaries, no proper supervision and registration. "The homestead allotments," according to the decree, "thus lose their subsidiary character and occasionally prove to be the chief source of revenue of the collective farmers. The collective farms therefore have a fairly considerable number of fictitious members who do not participate in the collective work of the farm, or only pretend to participate in it, but who actually devote most of their time to their individual allotments." These conditions, the decree maintains, "inevitably slow down the increase in the productivity of labor on the collectivized section of the farm, disorganize the honest collective farmers, and thus obstruct the further growth of the farms' revenue and the improvement in the standard of living. The responsibility for the violation of the provisions of the "Model Charter," according to the decree, rests largely with the local Soviet and party officials.

The decree provides a long list of measures designed to bring to an end the illegal practice. Allotments in excess of the norms established by the "Model Charter" were to be returned to the collective farms by November 15, 1939. Responsible local officials were to be removed from office, expelled from the Party and committed for trial. While the annual earnings of the large majority of the collective farmers, according to the decree, were from 200 to 600 "labor days" in a number of cases the figure was as low as 20 or 30 "labor days." The decree "advised" the collective farms to adopt the rule that every able-bodied member who has earned less than a definite number of "labor days" per year (the figure suggested varies from 60 to 100 according to the locality) should be expelled.

[1] It may be worth noting that while the Soviet government is the only purchaser of imports it maintains a high customs tariff the rates of which are frequently revised. For the general trend of Soviet foreign trade see above, p. 871.

transferred to the municipalities and government agencies. The State is, indeed, the Soviet Union's only business man.

Bureaucratic Nature of Controls. The administrative organs in charge of these varied activities are all purely bureaucratic in their nature, that is, all officials are appointed from above. The trade unions have the same functions as in industry—to strive for the fulfilment and over-fulfilment of the plan, for labor discipline, and for higher productivity. The methods of encouragement are everywhere the same; premiums, bonuses, piecework wages, organization of workers into brigades, "socialist competition," fostering of the Stakhanov movement. There is everywhere an elaborate system of penalties for those who lag behind and keep out of step. It will be remembered that the law on the Judiciary of August, 1938, established two special courts to deal with breaches of labor discipline and with disorganization of work on the railroads and in water transport.

Socialism vs. Private Enterprise

Tentative Conclusion. It will appear from this cursory survey that Soviet socialism was established not by proving in the process of market competition the "unchallengeable superiority" of nationalized industry over private enterprise,[1] but by the simpler method of government fiat. The same is even more true of agriculture. The private entrepreneur is gone but whether his disappearance has brought about the end of "the exploitation of man by man" is necessarily a matter of opinion. The rule of the huge and unwieldy bureaucracy, backed by an all-powerful Party, is stern, harsh and often erratic. Its mistakes have been many and costly. The Soviet Union has undoubtedly succeeded in revolutionizing agriculture and in building up in a remarkably short time a huge machinery of production. The costs of the ambitious venture in terms of money and human suffering has been extraordinarily high. The uncertainties and difficulties confronting the managers of business under socialism are at least as formidable as those under capitalism. There is no indication that the solution of these difficulties is in sight. The position of labor does not compare favorably with that of the workers in the United States, Great Britain or France. The incentives to work, although exactly the same as in the capitalist countries—greater reward for those who do better work—are re-enforced by a formidable array of penalties for those who fail and are therefore deemed

[1] See above, p. 883.

inimical to the regime. Even when full allowance is made for the relatively short time the Soviet experiment has been in operation there is nothing in the record so far to justify its claim to superiority over a system based on private initiative and private enterprise.

CHAPTER VII. ON THE THRESHOLD OF INTEGRAL COMMUNISM

A Checkered Record

Evolution of the Soviet Union. The third Five Year Plan, according to the statements of Soviet leaders, has ushered in a new era in the history of the country, a period characterized by the final establishment of the classless society and by the gradual transition to communism. This theme was, indeed, the keynote of the speeches delivered at the eighteenth congress of the Communist Party in March, 1939. It is unquestionable that a stupendous transformation did take place in the Soviet Union between 1917 and 1939. But not only were many of the changes purchased at what may rightly be considered an exorbitant price; they have also belied the forecasts of Marx, Engels, and Lenin. It has been pointed out that the cost of industrialization and collectivization in terms of both economic and human values was extremely high and that the results obtained are at best problematic. Practically no claim of achievement made on behalf of the Soviet Union can be accepted without careful reservations, even when the intentions of the communist leaders are beyond suspicion. There is, for instance, no reason to doubt the sincere desire of the Soviet Government to improve social services and the educational standards of the people. Budget appropriations under these headings were raised from 5.8 billion rubles in 1933 to 25.2 billion rubles in 1938. Yet it would be rash to deduce from the huge increase in the appropriations that a corresponding improvement in the actual conditions has taken place. To begin with, the absence of an index of prices makes any comparison of expenditure over a period of years not only fallible but largely meaningless. Moreover the reports of the All-Union Council of Trade Unions on the administration of social insurance in 1937 and 1938 give little ground for optimism.[1] The Soviet leaders are notably reticent on the practical aspects of their social insurance policies. The

[1] See above, pp. 894-895.

number of people benefiting by them would seem to be uncertain. It was reported that in 1937 out of a population of some 170 millions only 125,000 were drawing old-age pensions, that is, a very small proportion.[1] Statistics, moreover, tell only a part of the story. The number of schools and the circulation of newspapers and books has greatly increased, it is true, and the effort for the promotion of literacy and the advancement of learning is commendable, but in order to keep recent developments in their historical setting it must be recalled that compulsory primary education of all children, under the Imperial Law of 1908, was to be in effect by 1922. The character of the training the Soviet youth gets in the schools is obviously a matter of paramount importance. The educational levels are unfortunately deplorably low. Rigid adherence to the "party line" is a primary requirement which leads to intolerable dogmatism and to the eradication of all attempts at independent thought. What has happened to the once distinguished tradition of Russian learning may be gathered by perusing the official *History of the Communist Party of the Soviet Union* (1938) which has been reliably reported to be the work of Stalin and is available in an English translation. It would be difficult to find a volume duller, clumsier and more poorly written, or one containing a larger number of gross intentional distortions of generally known facts. Nevertheless the "History" was issued in six million copies and was unanimously acclaimed by Soviet scribes and orators as the greatest contribution to human thought and an unfailing guide to all problems of Marxism-Leninism. It is compulsory reading and also a compulsory "source of inspiration" for everyone in the Soviet Union from farm boys and army privates to the members of the Government and the fellows of the Academy of Science. Education under such auspices is not, perhaps, an unmixed blessing.

Russian Revolution and Marxian Theory. From the point of view of the more orthodox Marxist the general trend of the Russian Revolution cannot but be deeply disturbing. By a curious paradox the triumph of socialism in Russia may be rightly considered as a distinct blow to the Marxian theory. The socialist revolution did not take place, as anticipated by Marx, in an advanced industrial country, but in the backward agricultural realm of the Tsars. The revolution did not spread to other countries, yet the Soviet Union has survived and is building within

[1] Harold Denny in the *New York Times*, August 8, 1937.

its frontiers an integral socialist State that differs in many essentials from the structure visualized by Marx, Engels and Lenin. The contradictions between communist theory and the actual course of historical developments has necessitated a hasty revision of the dogma in order to bring it more or less in line with the actual conditions. The unforeseen position of the Soviet Union as a lone socialist country in the midst of capitalist nations naturally had a far-reaching effect upon both its foreign and domestic policy.

Foreign Relations and the Third International

Dual Position of the Soviet Union. Following the official acceptance of Stalin's doctrine of "socialism in a single country" [1] the Soviet Union has found itself in a highly ambiguous position: on the one hand, it remains in theory the leader of the world proletariat in its struggle against capitalism; on the other, it is a great national and strongly nationalistic power. There is no way of escape from the horns of the dilemma. Revolutionary Marxism calls for the overthrow of the bourgeois imperialistic States, direct action, and open and courageous leadership of the masses of the oppressed against the oppressors. But the interests of the "socialist homeland," the pressing needs dictated by the ambitious schemes of industrialization and domestic reconstruction, make imperative the maintenance of friendly and peaceful relations with the very capitalist and even fascist powers the Communists are sworn to destroy.

Peace Policies. There is no question that since about 1925 and until August, 1939, the entire foreign policy of the Soviet Union has been directed toward a peaceful co-existence with the capitalist nations. It has taken the form of innumerable commercial treaties and non-aggression pacts with every country that cared to join; in the conclusion in 1935 of the ill-fated military quasi-alliance with France and Czechoslovakia; and the joining in 1934 by the Soviet Union of that very League of Nations which is described in the program of the Russian Communist Party as an "international organization of the capitalists for the systematic exploitation of all the peoples of the earth and whose immediate efforts are directed to the suppression of revolutionary movements in every country"! No one, indeed, has been more active in recent years in Geneva than Maxim Litvinov, the former Soviet People's Commissar of Foreign Affairs, whose crude opportunism

[1] See above, pp. 819-821.

combined with the vulgar joviality of a former commercial traveler were mistaken by many, especially in this country, for true statesmanship. On the fearful date of September 29, 1938, when the question of war and peace had been tackled in Munich by Chamberlain, Daladier, Mussolini and Hitler, the Soviet Commissar of Foreign Affairs was delivering a discourse before a commission of the League of Nations, an assembly whose mind at the time, it may be surmised, was rather in the capital of Bavaria than on the shores of the Lake of Geneva. This episode may serve as a telling illustration of the Soviet Union's somewhat illogical conversion to the ideas of international co-operation with the capitalist nations and also of Russia's temporary eclipse as an active factor in European and world politics, although she continued, of course, to remain in the background as a great potential force for either good or evil.

The Third International. But if, until the conclusion of the Soviet-German pact in August, 1939, the practical policies of the Soviet Union have been definitely directed toward peaceful co-operation with the capitalist world the ideas of world revolution were not and could not be overtly abandoned. They continue to remain one of the Communist articles of faith to which, however, its adherents merely pay lip service without attempting to put them into practice. The change in the attitude of the Soviet Union toward world revolution is well illustrated by the vicissitudes of the Third International. The Third or Communist International, a world-wide alliance of the Communist parties, was established in Moscow in March, 1919.[1] Its charter provided that "The Communist International has for its purpose the struggle by all available means, including armed force, for the overthrow of the international bourgeosie and the creation of an international Soviet republic as a transition stage to the complete abolition of the State." A manifesto issued by the second congress of the International amplified the above statement by adding that the "international proletariat will not lay down its sword until Soviet Russia has become a link in the federation of the Soviet republics of the world." The Russian (All-Union) Communist Party is described as a section of the Third International. Officially there is no connection between the Soviet government and the International, but the latter is entirely dominated by Soviet

[1] The First International was organized by Marx and Engels and existed from 1864 to 1872; the Second International was organized in 1889 but was eventually repudiated by the Communists as lacking in revolutionary spirit.

leaders, has its headquarters in Moscow and is, presumably financed by the Soviets. No wonder therefore that the activities of the International closely reflect those of the Soviet Government. True to its charter and in agreement with the early militant attitude of Moscow the International in the beginning held its congresses yearly in 1919, 1920, 1921, and 1922. The fifth congress met in 1924, the sixth in 1928, and the seventh, after several delays, in 1935. The decline of the interest taken by the Soviet leaders in world revolution is clearly indicated by the growth of the intervals between the congresses. Moreover, the sixth congress, held in 1928, produced the International's new program which was largely the work of Stalin and the late Bukharin who was executed during the great purge. The program, while retaining the inflammatory phraseology of Marx's *Communist Manifesto,* introduced some important modifications in the revolutionary doctrine. The most significant among them was the strong emphasis on the duty of the world proletariat to defend the Soviet Union against the capitalist nations. Although the International never formally repudiated the revolutionary theories of its founders its character has suffered an unmistakable change: from the militant leader of the revolutionary world proletariat it has become primarily an institution for the defense of the Soviet Union against capitalist "aggression." Moreover, the practical influence of the International both in Russia and abroad is negligible. The "general staff of the world revolution" leads in Moscow the obscure and uneventful existence of a distinctly minor government department. Yet the very presence of the headquarters of the International in Moscow and its close although unofficial association with the Soviet Government not only indicate the dual nature of the Soviet State (as a national power and the leader of world revolution) but are also a source of embarrassment in matters of foreign policy.

The Soviet Union and the United States. The provisions of the charter of the International quoted above are obviously incompatible with some of the obligations entered into by the Soviet Government. For instance, Litvinov gave President Roosevelt on November 16, 1933, the definite pledge that it will be the fixed policy of the Soviet Government "not to permit the formation or residence on its territory of any organization or group —and to prevent the activity on its territory of any organization or group, or of representatives or officials of any organization or group—which has as an aim the overthrow of or the preparation

for the overthrow of, or bringing about by force of a change in, the political or social order of the whole or any part of the United States, its territories or possessions." It is self-evident that existence on the Russian soil of an organization such as the Third International cannot be reconciled with Litvinov's pledge. It is also inconceivable that the Department of State in Washington should be unaware of the flagrant falsity of the Soviet Union's solemn promise. The latter was presumably accepted as a tactical move toward the pacification of the opposition in this country to the long overdue *de jure* recognition of the Soviet Government by the United States.

Survivals of Revolutionary Zeal: China and Spain. Some modest survivals of the Soviet Union's former zeal for international revolution may be detected in the support the Soviets are believed to have given to the Chinese Communists and to the opponents of General Franco in Spain. The half-hearted nature of this action is strongly suggested by its failure in spite of Russia's vast resources. In the international field the Soviet Union on the threshold of integral communism played a part very different from the one assigned to the future socialist State by the earlier communist leaders.

The Soviet-German Pact of August, 1939, and the Annexation of Eastern Poland. The foreign policy of Moscow entered upon a new phase with the dramatic announcement, on August 21, 1939, of the impending conclusion of the Soviet-German nonaggression pact. The profound uneasiness created in Europe by the expansionist policies of the Third Reich had earlier led the conservative governments of Great Britain and France to seek an understanding with the Soviet Union in the vain hope of checking the ambitions of Hitler's Germany. Negotiations between London, Paris, and Moscow which had been going on since April, 1939, were brought to a sudden end by the conclusion on August 24 of the Soviet-German pact. Under the terms of this agreement, which is to run for ten years, the Soviet Union and Germany each undertakes not to participate in any "warlike acts" directed against the other contracting party. It soon became apparent, however, that Moscow and Berlin had reached a far more detailed and comprehensive understanding than that permitted to transpire in the published documents. The decision of the Soviet Government to side with Germany was undoubtedly the determining factor that made possible Hitler's attack on Poland. In the record-breaking campaign of merely three weeks the Ger-

man troops conquered the entire territory of the Polish Republic. The Russian Red Army, under the thin pretext of restoring order in a country that no longer had a government, proceeded on September 17 to occupy the eastern part of Poland while the Germans withdrew westward. By the Soviet-German agreement of September 28, 1939, a new frontier was traced and to Russia was assigned more than half of the territory of the former Polish Republic. The Soviet Government immediately organized public consultations in the annexed provinces which voted, unanimously of course, for incorporation in the Soviet State.[1] The next step was the drastic remodelling of the social and economic life of the former Polish provinces in accordance with the Russian pattern. The Soviet press spared no efforts to represent the annexation of Eastern Poland as an act of liberation—the freeing of the downtrodden peoples from the yoke of the landlords and the capitalists, the bestowal upon them of the blessings of the only "true democracy," that of the Soviets.

Esthonia, Latvia, Lithuania. Simultaneously with the annexation of Poland the Soviet Union proceeded to expand its control over the small Baltic States, former provinces of Russia severed from her at the end of the war of 1914-1918. Esthonia, Latvia and Lithuania, too weak to offer any resistance, obediently signed with Moscow pacts of "mutual assistance" which enabled the Soviets to establish naval and air bases in the territories of these republics. The German-speaking section of the population of the Baltic States, which had lived there since the thirteenth century, was summarily ordered by Berlin to wind up its business and withdraw to Germany. There can be no doubt that the control of the Baltic by the Soviets was a part of the price paid by Hitler for Moscow's assistance in his struggle against Great Britain and France.

Soviet-Finnish War. Demands similar to those made by Molotov, People's Commissar for Foreign Affairs, on Esthonia, Latvia, and Lithuania were presented to Finland but there they were met with stubborn resistance. Negotiations that lasted for several weeks proved fruitless and at the end of November the Soviet Government denounced its non-aggression pact with Finland. On November 30 on the pretext that the Finnish troops had fired on the Russians, the Red Army launched an attack on Finland, but the subjugation of the tiny northern republic proved a far more

[1] The annexed Polish territories were incorporated in the White Russian and the Ukrainian constituent republics.

difficult enterprise than had been Germany's conquest of Poland. A puppet "people's government" headed by a Finnish Communist, Kuusinen, was set up in the frontier resort of Terijoki and the Soviets proclaimed that the government of Helsinki had ceased to exist. The outside world, however, took a different view. Finland appealed to the League of Nations and on December 14, 1939, by unanimous vote of the Assembly the Soviet Union was expelled from the League. The issue of the uneven struggle between tiny Finland and the Russian colossus was a foregone conclusion unless assistance on a huge scale was received by Finland from England, France, and the Scandinavian countries. Such assistance, however, was not forthcoming, partly because Norway and Sweden insisted on maintaining their neutrality and partly, perhaps, because Great Britain and France hesitated for a time to attempt the landing of troops in Finland, a hazardous operation which would inevitably lead to a war between the Allies and the Soviet Union. The definite offer of help made to Helsinki by London and Paris came too late. The heroic defense of Finland against the Russian onslaught has saved her, at least for the time being, from complete destruction. The Karelian campaign brought no laurels to the Red Army and proved very costly.

The Treaty of March 12, 1940. The Soviet Government was reluctant to be drawn into a major war. After brief negotiations a treaty of peace between Finland and the Soviet Union was signed in Moscow on March 12, 1940. Under the terms of this treaty the Soviet Union acquired a considerable area of Finnish territory, including the entire Karelian isthmus with the city and bay of Viborg, important territories on the western and northern shores of Lake Ladoga, and a number of islands in the Gulf of Finland.[1] The peninsula of Hanko was leased to Russia for thirty years for an annual payment of 8,000,000 Finnish marks. Moscow also received the right of transit of goods between the U.S.S.R. and Sweden, which are to be connected by a new railroad line to be built in 1940. Russian troops were withdrawn from the Petsamo region in the north of Finland, which they had occupied during the war. The signature of the peace treaty was followed by the conclusion of a Soviet-Finnish trade agreement.

The Treaty Analyzed. The terms of the treaty of March 12th are much harsher than the demands made on Finland by the Soviet Union in November, 1939, which were considered at the

[1] See above, p. 842, n. 2.

time incompatible with the maintenance of Finnish independence. Favorable as these terms are to the U.S.S.R., they were purchased at the price of a new radical change of Soviet policy. Moscow negotiated the peace treaty with the government of Helsinki, to which it had denied recognition. Molotov stated in his address to the Supreme Soviet on March 29, 1940, that the peace negotiations were opened with the approval of the puppet "people's government" of Kuusinen, which "dissolved itself" after the treaty was signed. Molotov also announced that the losses of the Red Army were 49,000 dead and 159,000 wounded.

Finland and Soviet Opinion. The invasion of Finland and the annexation of Finnish territory was justified in Soviet pronouncements on the ground that they were necessary for the defense of the U.S.S.R. against imperialist aggression, and that they conferred upon the Finns the blessings of Soviet rule. How well-founded is the latter claim appears from the ignominious fate of the Kuusinen "people's government," and from the fact that, according to press reports, practically the entire population of the annexed territories abandoned their homes and withdrew behind the new Finnish frontier. It seems reasonably clear that although Finland succeeded in saving her independence she is entirely at the mercy of the Soviet Union. Her ultimate destiny will depend on the course of the European war.

The Outlook. At the time of this writing (April, 1940) the aims of the new Soviet foreign policy cannot be determined with any degree of precision. The unsuccessful negotiations with Turkey in October and the spasmodic outburst of the Soviet press against Rumania strongly suggest that Moscow is contemplating an expansion in the Balkans. What is the object of the support Stalin has given to Hitler? Is it inspired by a desire to bring under the Russian flag the territories lost by the Empire at the end of the war of 1914-1918? Is it motivated by a peculiar revival of the old doctrine that revolutions grow out of wars and that therefore a war between the great European powers would serve the aims of Communism? Or is it perhaps an attempt to impose the benefits of the Soviet form of government on the small neighboring countries by fire and sword? Whatever may be the object of the Kremlin the reversion of its policy that took place in August, 1939, could not have been more complete. Since 1933 the "united front against war and fascism" has been one of Moscow's principal slogans. The close co-operation between National-Socialist Germany and the Soviet Union is just as incompatible with

Moscow's professed detestation of fascism as the invasion of Finland is incompatible with Russia's widely proclaimed devotion to peace.

The Socialist State in Theory and in Practice

Soviet Socialism. No less disturbing from the point of view of the Marxian theory are some of the aspects of the socialist State that has emerged from the Soviet experiment. The Communists point out with justifiable pride that the Soviet Union has eliminated private ownership of the means of production, has collectivized farming, and, it is claimed, has brought into existence a classless community. Pleasing as are these results to the Socialists they cannot conceal the undeniable fact that the political structure of the Soviet commonwealth cannot be fitted into the pattern designed for it by Marx and Lenin. It will be recalled that, according to their teaching, the State is always an instrument of class domination.[1] Lenin has definitely said that the proletarian State once established will "immediately begin to wither away because in a society free from class contradictions the State is both unnecessary and impossible." He pointed out, with incautious precision, that the important elements in the process of the withering away of the State were the abolition of a professional army and the disappearance of the bureaucracy. The building of socialism in the Soviet Union, however, was accompanied by developments which are the very opposite of those anticipated by the founder of "scientific" socialism and its great Russian prophet. The professional army, far from disappearing, has been vastly increased, enjoys special privileges entirely unknown in the bourgeois countries, and is flattered and much admired. Military expenditures increase from year to year by leaps and bounds. The bureaucracy, instead of being replaced by a kind of universal temporary service of all citizens, as imagined by Lenin, has never been more firmly entrenched. It has invaded every field of activity and the hordes of State and Party officials, according to the authoritative statements of the Soviet leaders themselves, display in an exaggerated form the most objectionable characteristics of their colleagues in the capitalist countries. The long and powerful arm of the State guides the Soviet citizen through his daily routine, regulates the conditions under which he lives and works, measures out his "living space," confers upon him decorations and honorary titles if he is diligent and docile

[1] See above, pp. 814-817.

or, with the assistance of the ubiquitous police and of a remarkably elastic and comprehensive penal code, chastises him if he is recalcitrant, unappreciative, inefficient or, perhaps, unable to keep pace with the drastic speed-up of industrialization. Intellectual pursuits, the press, the schools, the arts, and science are rigidly controlled by an omnipotent bureaucracy whose chief qualification is unfaltering adherence to the "party line." Whatever may be the benefits conferred upon Russia by the Soviet system its administrative structure has nothing in common with the socialist commonwealth outlined by Lenin in his *The State and the Revolution.*

Stalin on Capitalist Environment

Stalin's Report to the Eighteenth Congress of the Party. The contradiction between theory and practice is so flagrant that it could not be indefinitely ignored even in a country that has learned the lesson never to ask those in power embarrassing questions. Stalin, who is the only fountain of Truth in the Soviet Union, has provided in his report to the eighteenth congress of the Communist Party an authoritative explanation of the reasons why Soviet communism differs in many essentials from the socialist commonwealth of Marx and Lenin. Elaborating and amplifying the views he had expressed on several previous occasions, he admitted that not a few of his followers find it difficult to reconcile actual conditions in the U.S.S.R. with the communist ideal. The argument advanced by Stalin to set at rest the minds of the doubting Thomases is the direct offspring of his doctrine of "socialism in a single country." He explained that the irreconcilable contradiction between the socialist commonwealth envisaged by Marx and Lenin and the Soviet State as it actually exists is due to the capitalist environment and especially to the activities of foreign spies. He pointed out that Engels never discussed the position of a lone socialist State among hostile capitalist nations. Engels, Stalin argued, was either concerned with the inner process of development of the future socialist State, irrespective of the international situation, or he proceeded on the assumption that socialism has been victorious in all or in the majority of the capitalist nations. Lenin, of course, could not be suspected of such negligence or lack of foresight. Stalin therefore produced the ingenious theory that Lenin's failure to discuss the behavior of the State in a single socialist country was due merely to the fact that the writing of his volume *The State and*

the Revolution was interrupted by the events of the autumn of 1917. What Lenin intended to say (although he certainly gave no indication of such intention) is now being said by Stalin. The pupil has written the final chapter of the master's great work. According to Stalin, the history of the Soviet Union is divided into two stages. The first stage lasted from the advent of the Bolsheviks to power to the liquidation of the exploiting classes. During this period the State has performed two principal functions: suppression of the dispossessed classes at home, and defense against foreign aggression. The third function, the administration of economic and cultural activities, was still relatively unimportant. The second stage is the period from the liquidation of the capitalist elements to the final triumph of socialist economy and the adoption of the new Constitution. The character of the State has changed.

"The function of military suppression at home has been dropped, has withered away," said Stalin, "because exploitation has been abolished, there are no more exploiters and there is no one to suppress. Instead of the function of suppression the State has assumed the new function of protecting socialist property against thieves and embezzlers of the people's wealth. The function of military defense from foreign aggression has been fully preserved and, therefore, there are maintained the Red Army, the Navy, as well as the penal agencies and intelligence service necessary to catch and punish the spies, assassins and 'wreckers' sent into our country by foreign intelligence services. The function of economic organization and the cultural-educational activities of the State agencies have been maintained and have been fully developed. Now the principal domestic task of our State consists in the peaceful work of economic organization and cultural and educational activities. As to our army, penal agencies and the intelligence service, the point of their weapon is no longer directed inside the country, but outside it, against our enemies. As you see we have now an entirely novel socialist State, unprecedented in history, a State that differs considerably in both its form and functions from the socialist State of the first period.

"But progress cannot be stopped here. We are moving further, forward, toward communism. Shall we maintain the State also under communism?

"Yes, it will be maintained unless the capitalist environment has been liquidated, unless the danger of military aggression from the outside has been removed. It is evident that the forms of our State will be altered again according to the modification of the domestic and foreign situation.

"No, it will not be maintained and will wither away if the capitalist environment has been removed, if its place has been taken by a socialist environment."

Stalin's Doctrine Appraised. The Soviet press and leaders have unanimously acclaimed Stalin's perhaps not very fortunate venture into theoretical analysis as a "priceless contribution to the treasure-house of Marxism-Leninism." It is difficult to agree with this evaluation even if one does not hold a very high opinion of the content of the "treasure-house." Far from expounding the views expressed by Lenin in *The State and the Revolution* Stalin has in fact drastically revised them. His socialist-minded critics have long held that the industrialization of Russia by the Soviets is a kind of inverted Marxism. Socialism, it is maintained, must be established through the dictatorship of the proletariat *because* the country has reached an advanced stage of capitalist development, while the Soviet Union is being industrialized *because* it is governed by a proletarian dictatorship. The recent theory ascribing to capitalist environment and to the activities of foreign spies and intelligence services a decisive role in shaping the political structure of the Socialist State displays a striking disregard for the essentials of the economic interpretation of history on which rests the Marxian analysis. Without attempting to go any further into the theoretical aspects of Stalin's new doctrine it may be said that its chief virtue consists in its childlike simplicity.

Its Practical Significance. The latest revision of one of socialism's principal tenets is not likely to have any practical consequences. It will merely allow the Soviet Union to pursue its former policy unhampered by ideological scruples and underhand criticism among the orthodox members of the Party. The withering away of the State is definitely relegated to a remote and uncertain future. The theory of the stateless communist society has joined world revolution among the dogmas that one reveres but never attempts to put into effect. The Red Army, the police and the bureaucracy are given the pleasing assurance that they are essential elements not only of socialism but also of the integral communism of the future. There is every reason to believe that this certitude will add to the complacence of these officials, will stimulate sporadic outbursts of zeal and will contribute to the further expansion of the field of their activities. Stalin has, indeed, written a new chapter in Lenin's *The State and the Revolution*. The chapter, however, amounts to a rewriting of the book itself.

Failure of the Marxian Prognosis. Yet it should not be overlooked that under Stalin's leadership private ownership of the

means of production in Russia has disappeared and that from this point of view the Soviet Union is definitely a socialist State. The truth of the matter would seem to be that the Marxian prognosis has failed to tally with the actual course of historical development and that theory has been sacrificed on the altar of expediency and *Realpolitik*.

Is the Soviet Union a Democracy?

Is the Soviet Union a Dictatorship? Stalin was on solid ground when he said that the Soviet Union was "an entirely novel socialist State, unprecedented in history." The socialist element in the structure of the U.S.S.R. has already been considered. Its political aspect is even more controversial. The Soviet Union is commonly referred to as a dictatorship. Sidney and Beatrice Webb, however, in their much admired book, published even before the adoption of the "democratic" Constitution of 1936, have arrived at the conclusion that the U.S.S.R. is "the very opposite of a dictatorship." [1] The illustrious British authors base this surprising statement on an examination of Soviet law in which they found nothing to justify the dictatorial powers of Stalin either in the State or in the Party. The Party, too, they argue, has no standing in law, a situation which has since been changed by Article 126 of the Constitution, although that article added nothing to the supremacy the Party had enjoyed before 1936. The Webbs' grievous misrepresentation of the Soviet political system was, in part, due to the fact that they approach the land of communism from the standpoint of British constitutional practice. They utterly failed to realize that while England, in the apt phrase of the great Anglo-Russian jurist and historian Sir Paul Vinogradoff, is a country governed by "the rule of law and the manly spirit of freedom," both these elements are as foreign to Soviet administration as they are to the Russian historical tradition.[2]

[1] Sidney and Beatrice Webb, *Soviet Communism: A New Civilization?* (New York, 1936), p. 436.

[2] The Webbs were also, no doubt, handicapped by their obstinate determination to find in the Soviet Union the promised land of the Fabian dream. They resolutely shut their eyes to the less pleasant aspects of the Russian situation, an attitude in which they were confirmed by their ignorance of the Russian language. What more charitable explanation can be suggested, for instance, of their "frank admission" that they do not understand what is meant by the phrase "dictatorship of the proletariat" (pp. 440-441) or of their truly revolting statement that "in the GPU correctional camps they teach not only reading and writing, but also political wisdom" (p. 590)? One may be tempted to find some excuse for the youthful and ardent S.A. and S.S. men who make similar claims for the German concentra-

The Official Point of View. The Moscow leaders themselves are anything but helpful in clarifying the nature of the Soviet State. According to the official communist view the U.S.S.R. is both a dictatorship of the proletariat and a democracy. Stalin's statement to the effect that the Constitution preserves intact the dictatorship of the working class and the leading position of the Communist Party has already been quoted.[1] Yet he insisted in his report to the eighteenth congress of the Party that "no one dares to question that our Constitution is the most democratic in the world." The absolute contradiction of these two assertions, which are invariably coupled in Soviet pronouncements, strongly suggests that the term "democracy" has in the U.S.S.R. a meaning that differs from the one accepted in the United States and in the democratic countries of Western Europe.

The One-Party State. The backbone of the political structure of the Soviet Union is the Communist Party. The one-party State, the Soviet's definite contribution to political theory and to the practice of government, has been successfully duplicated since by Italian Fascism and German National Socialism. The Party controls all the activities of the nation and is itself bound together by unfaltering adherence to the "party line" and absolute obedience to the leader. No other political figure in the world is surrounded by greater personal adulation than is Stalin. He is invariably referred to as "the genius," "the leader of the peoples" (always in the plural), "the beloved," "our own" *(rodnoi).* His opinions are never questioned; all his pronouncements, however commonplace or crude, are treated as revelations. He is protected from even a suspicion of criticism not only by the press, which is owned and controlled either by the State or by the Party, but also by the absolute prohibition against Soviet citizens' going abroad except on official business. It is the duty of the most humble official to see to it that the ritual of universal adoration that forms a part of Stalin's daily routine shall not be inadvertently violated even by a misguided if well-meaning foreigner. André Gide, the great French novelist, visited the Soviet Union in 1936 as a guest of the Government. He delivered the official valedictory at Maxim Gorky's funeral in the Moscow Red Square. While traveling through the Caucasus Gide passed through Gori, Stalin's birthplace, and as a matter of courtesy decided to send

tion camps, but the assertion is surely nothing short of a scandal from the pen of the eminent, benevolent and elderly Fabian Socialists.

[1] See above, p. 855.

him a message of greeting. The telegraph employee refused to accept his wire because he addressed Stalin as "you." This, Gide was told, could not be done. Stalin must be addressed as "you, leader of the workers" or "you, master of the peoples" or something to this effect.[1] Since 1936 the ritual has been revised in the sense that Stalin must be addressed in more intimate terms of personal endearment. To love Stalin and to give vent to the feeling of affection is the primary duty of every Soviet citizen. The obligation is even more stringent in the case of party members. Never was Stalin more enthusiastically acclaimed than at the party congress in March, 1939. The body of men and women who shouted themselves hoarse in proclaiming Comrade Stalin's imperishable glory (one of the delegates referred to him as "eternal," whatever that may mean, a fortunate inspiration that threw the communist assembly into a paroxysm of delirious ovations) had only recently lost most of their leaders and an extraordinarily high percentage of their own number as a result of the purge. Innumerable instances of most shocking abuses and mistreatment of the rank and file of the Party were cynically displayed in the report presented to the congress by Zhdanov. Yet not a single voice was raised to criticize the man who had ordered the purge and who alone had the power to stop it. Blind obedience is the Communist's foremost duty.

What is Political Democracy? The monopolistic position of the Party in the Soviet State and the complete control of the Party by Stalin give a very definite and grim meaning to the phrase "dictatorship of the proletariat," which the Webbs found it impossible to comprehend. Nevertheless the Soviet leaders have a certain formal justification for describing the U.S.S.R. as a democracy since the Constitution has introduced universal suffrage and the direct secret ballot. How this dual system works in practice has already been explained. Universal suffrage and the direct secret ballot, however, are merely the tools of democracy in the sense that the term is used outside the totalitarian countries (U.S.S.R., Italy and Germany). The essence of political democracy is the right to hold and express freely views that do not agree with those of the group in power. Organized opposition is the most vital element of a modern democratic system, an element that is indispensable to the efficient and orderly conduct of the business of government. Great Britain has officially recognized the importance of the dissenting minority by providing a salary for

[1] André Gide, *Return from the U.S.S.R.* (New York, 1937), pp. 45-46.

the leader of "His Majesty's Opposition" in the House of Commons. The one-party State is the antithesis of political democracy in the accepted meaning of the term.

The One-Party State and the Old-Fashioned Autocracies. The methods of the one-party State are just as different from those of the old-fashioned autocracies, such as Imperial Russia, Royal Spain or, perhaps some of the South and Central American republics (which oddly enough are occasionally represented as democracies) as they are from democratic procedure. It will be recalled that in Imperial Russia the franchise was limited, the powers of the State Duma were parsimoniously measured out by law and frequently infringed by the government. The official slogan was "do not get together" (*ne skopliastsa*), that is public gatherings were looked upon with suspicion as a potential source of danger to the regime. Under the Soviet rule, on the contrary, "to get together" has become a duty; the masses are not only permitted but are forcibly encouraged to vote, and the elective assemblies enjoy in theory the widest powers. On every conceivable occasion the tramping of millions of feet resounds in the streets of Moscow, just as it does in those of Rome and Berlin. Nevertheless the assembled multitudes and their accredited representatives are far more obedient and docile than are public opinion and parliament under any other form of government. The apparent paradox may be explained by paraphrasing the German adage: *"Und der König absolute wenn er unsern Willen tut"*—the king has absolute power if he does what we want him to do. The reverse is true of the modern one-party State: the people have absolute power provided they do as they are told by the leader through the instrumentality of the Party. This is the real meaning of democracy in the one-party State, whether Soviet, Fascist, or National Socialist.

The Russian Tradition. On the other hand, through its rule by government fiat the Soviet regime is the continuation of a tradition that has been the curse of Russian history since, perhaps, as early as the twelfth century.

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THE GOVERNMENT AND POLITICS OF THE SCANDINAVIAN COUNTRIES

BY *Nils Herlitz* AND *John H. Wuorinen*

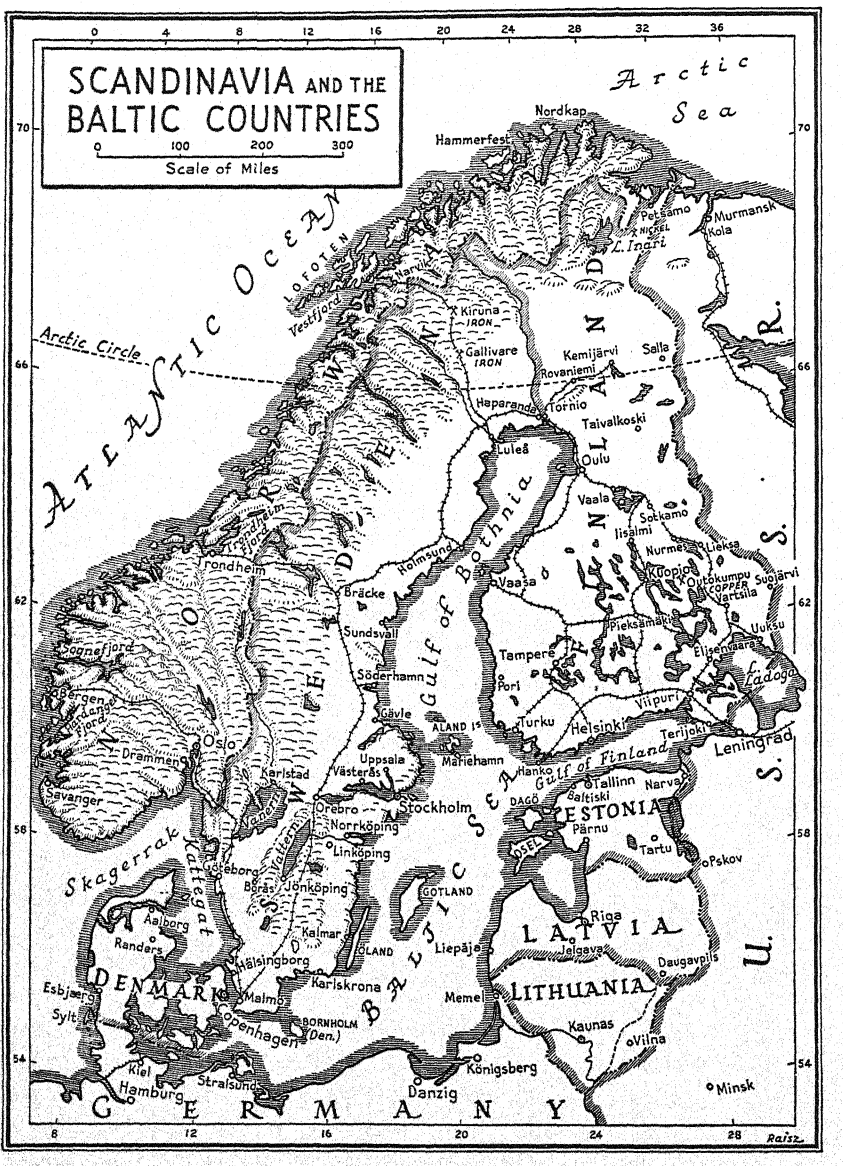
The text of this section was originally written by Professor Herlitz but was rewritten to make it conform more closely to the general plan of the book. Due to war conditions at the time this book was being manufactured this section did not receive Professor Herlitz's visa.

CHAPTER I. SCANDINAVIA

The four Northern countries, Denmark, Finland, Norway, and Sweden are often thought of as representing a markedly homogeneous unit. Their economic life has developed along similar lines, and while diversities do exist, agriculture, industry, trade, commerce and the like follow the same general pattern. Social life and conditions likewise show uniformity that is more marked than differences. Political institutions, the administration of justice, endeavor and achievement in the field of education, or the position and functions of the Church—which has been Lutheran since the sixteenth century—all have many common features, and show that, broadly speaking, these four countries have the same ways of looking at things, and the same ways of handling the problems of man's life in society.

This does not mean that past historical development, or the problems of the passing hour, have erased the lines that divide Scandinavia into four distinct States. On the contrary, they have been more deeply etched by each passing generation. The result is that today four nations constitute the Scandinavian part of Europe, that each has its own separate political structure, and that each of the four peoples feels itself endowed with a separate "national character."

This separateness has not always been as marked as it has come to be in the twentieth century. There was a time (1389-1523) when the Danes, the Finns, the Norwegians, and the Swedes were subjects of the same Crown. More important was the fact that for over six centuries the Swedes and the Finns constituted a united Kingdom, and that the Danes and the Norwegians were found together in the same state for over four hundred years. Common historical background that spanned generations inevitably left deep impressions upon the development of each nation which later, independent existence never has completely eliminated. Furthermore, the decades between the World War and that of 1939 produced a growing co-operation among the four peoples that is unusual in the field of foreign relations, and gave


SCANDINAVIA AND THE BALTIC COUNTRIES
0 100 200 300
Scale of Miles
Arctic Sea
Nordkap
Hammerfest
Petsamo
Murmansk
Kola
Nickel
L. Inari
Kiruna
Iron
Gallivare
Iron
Kemijärvi
Rovaniemi
Salla
Haparanda
Tornio
Taivalkoski
Luleå
Oulu
Vaala
Sotkamo
Iisalmi
Nurmes
Lieksa
Kuopio
Outokumpu
Copper
Vartsila
Suojärvi
Vaasa
Pieksämäki
Uuksu
Tampere
Pori
Elisenvaara
L. Ladoga
Viipuri
Turku
Helsinki
Terijoki
Leningrad
Åland Is
Mariehamn
Hanko
Gulf of Finland
Tallinn
Narva
Saltiski
Dagö
Estonia
Pärnu
Tartu
Pskov
Ösel
Riga
Jelgava
Daugavpils
Latvia
Liepaja
Lithuania
Meme
Kaunas
Vilna
Minsk
Königsberg
Danzig
Germany
Arctic Ocean
Arctic Circle
Lofoten
Vestfjord
Narvik
Kiruna
Gallivare
Norway
Trondheim
Trondhjemsfjord
Bergen
Hardangerfjord
Sognefjord
Stavanger
Oslo
Drammen
Karlstad
Örebro
Norrköping
Linköping
Göteborg
Borås
Jönköping
Skagerrak
Kattegat
Aalborg
Randers
Esbjerg
Sylt
Denmark
Helsingborg
Malmö
Copenhagen
Kalmar
Karlskrona
Gotland
Öland
Bornholm (Den.)
Kiel
Hamburg
Stralsund
Sweden
Bothnian Sea
Gulf of Bothnia
Baltic Sea
Bräcke
Sundsvall
Söderhamn
Gävle
Uppsala
Västerås
Stockholm
Raisz.

these nations a solid sense of common objectives and common policy. Scandinavian co-operation was being transformed from a polite phrase appropriate to public banquets into a robust reality of growing significance. Uniform and common laws in certain fields testified to its meaning; agreements in the world of business concerning foreign markets illustrated its importance; united action in behalf of international peace testified to its strength in the formulation of foreign policy. In a word, from 1918 on Scandinavian co-operation had increasingly enlisted the interest and support of the worker, the academician, and the man of business, had penetrated into the lecture rooms of school, university, and workers' institute, had passed beyond the stage of mere debate in national legislatures, and had become a part of the labor carried on in the council chambers of ministers of State. But this developing solidarity was suddenly tested by the ordeal of war, first when Finland was invaded by Soviet Russia in November, 1939, and then when Denmark was occupied and Norway overrun by the armies of Nazi Germany. What the future has in store for the hard-pressed Scandinavian countries is now impossible to predict. But their experience in democratic government will always remain a significant chapter of world history and a vivifying principle to be cherished by the people themselves.

Sweden-Finland

Finland became a part of the Swedish Kingdom between the middle of the twelfth century and the close of the thirteenth. At the time, Sweden was not yet a united State. It was rather a union of provinces, each with its own assembly and laws. The monarchy was elective. The King was chosen by the provinces, obtained confirmation of his election from them, and agreed to observe their laws. Centuries were to elapse before a centralized State came into being and Sweden emerged as a monarchy in the modern sense of the word.

It was of fundamental importance that Finland was included in Sweden long before the process of unification and centralization had destroyed the provinces as the basic units of the State, and while concepts of law, political authority, and the like still had no clearly defined meaning outside or independent of the provinces. That the union between the two peoples came when it did made it possible for Finland to become one of the component parts of a monarchy in the making and to grow, together with the other parts of the kingdom, by slow degrees, into the

centralized State. To put it differently, when centralization gained ground at the expense of local institutions, the resulting amalgamation proceeded in general equally on both sides of the Gulf of Bothnia. The provinces coalesced into a larger unit of a unified state in which political authority, law, and the administration of justice were no longer provincial but national.

The process was largely completed between 1523 and 1560—by that time western Finland had been a part of Sweden for some 400 years, and the rest for about 250 years—although a national legislature definitely recognized by law did not come into being until 1617. When the full-fledged national monarchy appeared in the sixteenth and seventeenth centuries, the Finns had thus been joined to the Swedes for ten generations and more.

The political and other bonds that united Swede and Finn held them together, not in the relationship of master and subject, but in the relationship of common citizenship in a common State. The inhabitants of Finland enjoyed all the political, legal, and other rights possessed by the inhabitants of the western parts of the realm. Equally with the Swedes, they chose the common King (after 1362). They were "native Swedes" as regards appointments to public posts. The laws which established the Riksdag, the parliament of the monarchy, defined its composition, functions, and powers, and provided alike for the Estates in both parts of the kingdom. Broadly speaking, the same qualifications for the right to vote, eligibility to seats, and the method of selecting members prevailed in Finland and in Sweden proper.

For over six hundred years—or until 1809—Swede and Finn shared weal and woe as subjects of the same Crown, and as inhabitants of the same State. During this long period, religious and educational life, economic organization, government in general, legislation and the administration of justice, were all institutionalized according to common patterns which had been slowly evolved in the course of several centuries. In the course of many decades Swede and Finn had gradually freed themselves from arbitrary government, had built up a broadening domain of government according to constitutions, and had struck out on the path which ultimately led the subject to the higher status of a free, self-governing citizen.

Denmark-Norway

For centuries the history and political fortunes of the Danes and the Norwegians were also linked together. From the closing

years of the thirteen-hundreds to the Napoleonic period, the inhabitants of Denmark and Norway were subjects of the same King, and lived under a common central government. But while their union may superficially be compared with the union of Sweden and Finland, briefly sketched above, and while it might seem that the consequences of the union were not unlike those noted in the case of the Swedes and the Finns, there were a number of differences that require mention.

In the first place, Norway had been a sovereign kingdom before dynastic politics coupled the country with Denmark in 1389. For nearly a century and a half thereafter, Norway retained its political identity in the union. In 1536, however, a revolt against Danish domination resulted in the extinction of Norway as a separate kingdom. Thenceforth Norway was ruled from Copenhagen, as a subordinate province. Danes increasingly dominated Church and Government in Norway, and Norwegians were deprived of much of the substance of self-rule. Government came increasingly to mean rule by a Danish bureaucracy.

Secondly, the trend in Denmark from about 1600 to the nineteenth century was toward unlimited monarchy, and not toward broadening parliamentary influence or other restrictions upon the powers of the Crown. In 1660-1665, this development resulted in the establishment of a curious anomaly in modern European history: unlimited royal absolutism founded upon a fundamental law, and deriving its force from the explicit provisions of a Constitution. Regarding the "King's Law" of 1665 which established this royal absolutism, a Danish historian has remarked that it is "the only written law in the civilized world which prescribes absolutism down to its ultimate details." Only three limitations were imposed by the "King's Law" upon the Crown. They were: (1) the maintenance of the territorial integrity of the kingdom; (2) the maintenance of the Christian religion as set down in the Augsburg Confession; and (3) the observance of the "King's Law" itself.

One of the first consequences of absolutism was a far-reaching reorganization of the administration of the kingdom. Reorganization spelled a high degree of centralization both in Denmark and Norway. It also meant a further strengthening of bureaucracy, and the disappearance of much of the local self-government which had existed earlier. It likewise led to the granting of certain privileges to the landed aristocracy which ultimately enabled them to reduce a goodly part of the peasantry to a well-nigh

servile status. The peasant was tied to the soil during the first half of the eighteenth century, and remained tied to the soil until reforms begun in 1788 once again made him a free man. This development was purely Danish, and was not extended to Norway, where serfdom never appeared.

While Denmark and Norway thus had constitutional government after 1660, it is obvious that the nature of the fundamental law of the monarchy prevented Danes and Norwegians from exercising those rights and powers of self-government that are usually implied by constitutions. For several generations the plenitude of royal power prescribed for country and people, unhampered by the obstructions of a legislature and unchecked by the opposition of ministers. Legislatures did not appear, as a matter of fact, until the nineteenth century, and responsible cabinets came only after law making had become the business of the representatives of the people in parliament assembled.

Emergence of Autonomous Finland

During the Napoleonic period, Scandinavia underwent significant change. Territorial changes greater than any that had been witnessed for centuries took place, and new political boundaries remade the political map of the North. Changes in the field of government likewise brushed aside the old and ushered in the new. Constitutions were revised or drafted and put into operation. By the time Napoleon began his residence in far-away St. Helena, Norway, Sweden, Finland, and Denmark had each commenced a new chapter in its history.

The nature of the changes, and the results that flowed from them, can best be indicated by treating each country separately.

In 1808, Russian troops invaded Finland, the eastern part of the Swedish kingdom. The war that ensued culminated in Russian victory, and resulted in the cession of all of Finland to Russia in the fall of 1809. Sweden thus lost over one-third of the territory that had comprised the kingdom for centuries. But from the viewpoint of the Finns, the cession of their country to Russia came to mean much more than transfer of territory. Finland's existence as a part of the Russian Empire was defined from the start not in terms of a subject province, but in terms of an autonomous, constitutional State.

While the Russo-Finnish War was still in progress, Alexander I issued a call to the four Estates in Finland to send representatives to a Diet able to act for the whole country. The call was

heeded, and the Diet met from March, 1809, to July of that year. The representatives of the nation were given a special task to perform. They were to take the government and administration that functioned in Finland before Russia's invasion, and to mold them into conformity with the new order established by Russia's victory. The result was the emergence of Finland as a self-governing State in union with Russia, with a separate constitution. Only foreign affairs were set aside as a field of public business exclusively reserved to the Russian Imperial Government, although Finnish influence even in this field was not wholly excluded.

More specifically, the new political and constitutional order of things meant the following. The Constitution in force in the Swedish kingdom before 1809 was retained, except for changes which Russia's conquest made imperative. The Emperor of Russia, as Grand Duke of Finland, became the monarch, in the place of the King of Sweden. An appointive Government Council modeled on the Swedish Council of State was created to form the central administration of the country. The Diet of Finland was given the position occupied in the Swedish kingdom by the Riksdag, and its powers and functions were set down in terms that had applied to the Riksdag prior to 1809. The King of Sweden had been the constitutional monarch of the kingdom; the Tsar of Russia, as Grand Duke of Finland, now became the constitutional monarch of Finland. In Russia he was an absolute ruler. In Finland he was bound by the fundamental law of the land which recognized no absolutism, and defined government in a manner that included the representatives of the nation as an equal of the Crown in legislation of basic nature, and in the conduct of much of public affairs in general.

The nature of Finland's autonomy may be summarized by saying that (1) separate Finnish citizenship was established, the citizens of the country to be subject to Finnish law; (2) the Lutheran Church retained its position as State Church; (3) only Finnish citizens of this religious persuasion could be appointed to public posts—a provision which was changed in 1827 to extend the same right to Greek Orthodox Finnish citizens, who numbered some 40,000; (4) all taxes raised in Finland were to be spent in Finland; (5) the changing of old laws or the enactment of new legislation, and the imposition of taxes, could be accomplished only with the consent and co-operation of the Finnish Diet; (6) The Diet convened only at the instance of the Grand Duke, but in 1869 regular five-year Diets came into being, and after 1883,

the legislature became a three-year Diet; (7) the central government—that is to say, the Government Council, which was divided into a Department of Justice and another department in charge of the various branches of administration—was composed of Finns; (8) Courts and local government remained as Finnish as heretofore; (9) a Finnish State Secretariat established in the Russian capital served as the organ through which Finnish business in St. Petersburg was transacted; (10) the conduct of foreign affairs was specifically reserved to Russia.

The Finnish Constitution and the sanctity of the laws of the land were confirmed by Alexander I in 1809 and by all his successors, at the time of their coronation, down to the Russian Revolution of 1917. The act of assurance in each instance read in part: "We have desired, by the present act, to confirm and ratify the religion and fundamental laws of the land, as well as the privileges and rights which each class [in Finland] in particular, and all the inhabitants in general, be their position high or low, have hitherto enjoyed according to the Constitution. We promise to maintain all these benefits and laws, firmly and securely in full force." In the course of the years, especially 1863-1898, the domain of Finland's self-government was considerably extended, until Russification after 1898 began to threaten autonomy and rule by law in general. The establishment of independence in 1917-1918 enabled the Finns to return to their constitutional moorings, and to fashion and put into effect a Republican Constitution in 1919.

Constitutional Reform in Sweden

In Sweden, the years following 1808 meant not only the loss of the Finnish part of the kingdom, but other changes as well. In the midst of the war in Finland, discontented Swedes engineered a coup d'état in Stockholm. The King was apprehended and deposed, and a new and more liberal Constitution was drafted. It went into effect in the summer of 1809, and became the foundation upon which the Swedish government rested throughout the greater part of the last century. In fact, it has remained largely unchanged since it was enacted. Between 1809 and 1812, three other laws of constitutional nature were adopted. The Act of Settlement of 1810 fixed the succession to the throne in the male line of the House of Bernadotte; the Riksdag Law of 1809 defined the composition and powers of the national legislature; and the Press Law of 1812 gave press and publications greater

freedom of expression by removing preventive censorship. The last three laws have been changed on several occasions.

The Constitution of 1809 and the Riksdag Law may be briefly summarized by noting that (1) a hereditary monarchy was retained; (2) the powers of the monarch were limited by the provision that he must consult the Council of State; (3) the Council of State, whose members were appointed by the King, represented in its functioning a form of ministerial responsibility in that the signature of its members was required for all decisions, the members being accountable at law for their actions and for failure to act; (4) The Riksdag, which had been convoked for decades only at the instance of the King, was now to convene every five years, and the minimum length of its sessions fixed at four months; (5) parliamentary immunity was secured by means of a provision that the legislature would not function if the King was present; (6) the right of parliament to initiate legislation was extended to include "economic questions," which heretofore had been reserved to the monarch; (7) in taxation and the raising of public loans the consent of the legislature was henceforth required, the principle of allocating funds to specific purposes adopted, and the right to scrutinize public finances definitely established.

In the composition of the Riksdag, no changes were effected by the reforms of 1809-1812. The legislature remained an unrepresentative body composed of the four Estates: the Nobility, the Clergy, the Burghers, and the Peasants. The franchise likewise continued on the old basis, which meant property qualifications that excluded the majority of the nation from the polls. After 1850, however, the demand for the modernization of the Riksdag and for the liberalization of the franchise began to gain ground, and ultimately led to further reforms that meant the establishment of a broadening democratic base for the political life of the kingdom. The most important of these reforms came in 1866. In that year, the antiquated four-Estate legislature was replaced by a bi-cameral body based on equal but restricted suffrage.

Norway—New Status

The coup d'état of 1809 and the deposition of the King led to developments other than a revision of the Constitution and the enactment of a new parliament law. The problem of succession to the throne became pressing shortly after the overthrow of the old monarchy, and was solved ultimately by the election, in 1810,

of one of the generals of Napoleon, Bernadotte, as heir to the throne of Sweden. From the choice of the dashing French general flowed many unforeseen consequences which left their stamp upon Sweden, Finland, Norway, and Denmark, and determined for years to come much of their history in general and government in particular.

One of the main reasons for the selection of Bernadotte as the future King of Sweden was the hope that through him, Finland would be recovered. Bernadotte himself stated in 1811 that "when the Estates chose me they did so only in order to please [Napoleon] and with the hope that the first result of his favor and protection would be the return [of Finland]. When I arrived [in Sweden], this foolish scheme occupied everybody's mind." Bernadotte, however, soon defined Sweden's new foreign policy in a manner that provided for no liberation of Finland. He considered Finland as an unimportant province and a perennial subject of contention between Sweden and Russia. Any attempt to recover Finland he considered hazardous and unwise, and productive of no permanent advantage. Early in 1812, Sweden and Russia entered into a secret agreement whereby each engaged to respect the territories of the other. The cession of Finland was thus again confirmed. The new liaison was further solemnized later in the same year, when Alexander I guaranteed Bernadotte's succession to the Swedish throne. An understanding was also effected which assigned Norway to Sweden as compensation for the loss of Finland, and provided for Russia's support for the effort to extend Swedish rule to Norway.

The acquisition of Norway now became the main objective of Bernadotte. In January, 1814, Denmark was forced to cede Norway to Sweden. The Treaty of Kiel, whereby this cession was arranged, was concluded without consulting the Norwegians, who refused to recognize it, and proceeded to set their own political house in order, intending to step forth as an independent, sovereign nation. A brief war fought in the summer of 1814 brought Norwegian opposition to an end, and led to the conclusion of a convention which stated in part that "the kingdom of Norway, without being regarded as a conquered country, shall in the future be an independent state united with Sweden; and its present Constitution shall be properly protected, after the changes necessitated by the union of the two countries shall have been made." Finally, the Act of Union in November, 1814, completed the union of Norway with Sweden. It recognized the con-

sent of the Norwegians, and not the Danish cession of Norway to the Swedish crown, as the basis of the union, and likewise recognized the equality of Norway and Sweden in the new partnership. However, the fact that foreign affairs and the foreign service of the Union were left from the start in the hands of Sweden boded ill for the future, and before long caused friction that contributed to the dissolution of the Union in 1905.

The political unification of the Scandinavian peninsula was achieved, as has been suggested, only after the Norwegians had attempted to establish a sovereign Norwegian State. While the attempt was unsuccessful, it led among other things to a constitutional and governmental reform that outlived the independence movement and remained the basis upon which Norway's government rested throughout the nineteenth century. Upon it was ultimately builded an independent and sovereign Norway.

Under Denmark, Norway had been little more than a subordinate province, governed by a royal absolutism intolerant of any restrictions upon its powers. The decade before 1814 changed the situation in several ways. For instance, Norway was cut off from Denmark as a result of the international conflicts of these years; control from Copenhagen on occasion largely disappeared, and Norway was left to shift for itself. The ties uniting Norway to Denmark were loosened, and completely severed in January, 1814, when Norway was ceded to the King of Sweden. It has been noted that the Norwegians were not consulted. They did not desire to be united to Sweden. On the contrary, the country having been freed from Danish domination, a movement for Norwegian independence made its appearance, and speedily resulted in the proclamation of independence, the election of a King, and the drafting of a Constitution for the new State.

Norway's New Constitution

In February, 1814, an assembly of leading Norwegians was held in Eidsvoll. The Assembly claimed that the Norwegians were now free men, and that the cession of the country to Sweden could not be accepted. A Regent was chosen, and provision was made for the convocation of a general constitutional convention for the purpose of drafting a new fundamental law for the nation. The Constituent Assembly met in Eidsvoll on April 10, 1814, and completed its labors on May 17. The basic principles embodied in the Constitution were: (1) Norway was a limited, hereditary monarchy; (2) the judiciary, the legislative and the executive

branches of the government were sharply differentiated; (3) the Lutheran Church was recognized as the State Church, but other sects were given the right to worship according to their faith; (4) no hereditary or personal privileges were to be granted in the future; (5) the legislative power was to be exercised by the people, through elected representatives; (6) the press to be free, and economic life to be freed from antiquated restrictions; (7) the King to have only a suspensive veto over legislation.

When completed on May 17, 1814, the new Constitution embodied these principles and created a monarchy which was democratic. Neither the Crown nor the privileged upper classes were henceforth to govern without the representatives of the nation. The main political power rested in the hands of the latter. As regards the legislature (Storting), its composition served to show in marked relief the democratic features of the Constitution. The legislature consisted of one chamber only, elected for three years. For purposes of legislative business, however, the Storting divided itself at the beginning of its session into two parts. One-fourth of the members constituted the Lagting, and the remaining three-fourths the Odelsting. Legislation was introduced in the latter, which in a sense served as the lower house. In the event of disagreement between the two bodies, a plenary session of the chambers would formulate the decision.

The Eidsvoll assembly also took definite action on the question of independence. On May 17, the convention chose Christian Frederick as King of Norway. Christian Frederick was the heir to the throne of Denmark, and had been Viceroy of Norway since 1813. He had placed himself at the head of the independence movement in the country, and was now to lead the new nation as its crowned head. But as has been pointed out, independence proclaimed did not mean independence achieved. In the brief period of a few months, Norway was united to Sweden, and the dream of a sovereign Norway abandoned. The Constitution, however, remained in force, although some of its sections were changed to correspond to the conditions created by the union with Sweden. Indeed, by 1821 the Norwegians succeeded in enforcing one of the basic provisions of the Constitution. The case in point involved the question of the suspensive veto of the Crown.

The legislature enacted a law in 1815—the first year of the union, and the first year of the Eidsvoll Constitution—which abolished the hereditary nobility of the country. The King re-

fused to sanction the measure. The legislature returned to the charge in 1818, when the bill was again passed. It met the fate of the first, and failed to obtain royal sanction. In 1821, the Storting enacted the bill a third time. By that time, the conflict between Crown and parliament over this measure had assumed the importance of a basic constitutional contest. Article 79 of the Norwegian Constitution provided that if the Storting passed a law in three consecutive sessions, "it shall become a law even if the [Royal] sanction is not granted before the Storting adjourns." The deadlock therefore meant the question, Shall suspensive veto be definitely fixed as a working part of the Constitution, or shall it be surrendered?

By passing the measure for the third time in 1821, the Storting committed itself to the task of establishing, once and for all, a precedent that would settle the matter. The King of Sweden had brought considerable pressure to bear upon the legislature in order to secure the failure of the bill. The Storting was adamant, for it and the country felt that the Constitution itself was now being tested. Despite threats and intimidation, the Storting stood its ground. The bill became law without royal sanction. The contest served to strengthen the determination of the Norwegians that their position as a constitutional monarchy in the Union should not be subordinate to that of Sweden, and that in the internal affairs of the nation Norwegian law and not power claimed by the King of Sweden furnished the basis of public policy.

Trends in Denmark

It is obvious, in the light of the events summarized above, that Denmark emerged from the events of 1808-1814 with new boundaries and, in general, new status. By the time the Congress of Vienna had remade the map of Europe, Norway had been lost, and lost beyond the hope of recovery. The time had now come for Denmark to abandon the hope of once again playing a real part in European affairs, and to accept the role of a small State. Within a surprisingly brief period, government and nation accepted the new order of things, and turned to the solution of economic, financial, and other problems which beset the country.

In one respect, however, the existing order of things remained as of old. Denmark remained for years after 1815 an absolute monarchy. No demand for constitutional government appeared, and the monarchy was content to govern without voluntary

modification of the absolutism that had been established in the sixteen-hundreds. That absolute monarchy continued to be accepted without protest was perhaps largely due to the fact that after 1780, it had achieved important agrarian reforms—the abolition of serfdom, for instance—and that it had come to rest, to a large extent, upon a middle-class bureaucracy. Until 1849, the King continued to exercise decisive influence, especially in all matters pertaining to foreign policy, the army, appointments to and promotion in public service, and the like. In a word, the King ruled as well as reigned.

Some concessions to the spirit of the times were made, however, after 1830. While the July Revolution in France in 1830, did not affect Denmark in an important way, the government began to temper the absolutism of the King. In 1831, provision was made for provincial estates, and after 1834, the estates began to function. These assemblies were consultative only, and for years their importance, even in local governments, was very moderate. Yet the establishment of the provincial assemblies marked a significant new departure. In the first place, through them the principle of representative government was recognized, although the sphere within which representative government was to function was strongly limited. Secondly, the assemblies were elective and not appointed by the Crown, and a recognition of the right to vote was therefore a part of the arrangement. The franchise, which was based upon property qualifications, was given to only about 2.5% of the people, but moderate as the franchise was, it represented a clear recognition of the principle that within limits that were considered appropriate at the time, the subjects of the King were competent to participate in the transaction of public business.

Danish Constitutional Developments

It was inevitable, considering the trends in Europe during the middle decades of the last century, that the Danes should sooner or later turn to a demand for further reform. The local assemblies had barely begun to function in 1834, when voices were raised on behalf of additional change that would combine these assemblies—four in number—into a national parliament, and lead to the establishment of a Constitution giving the people a voice in law making. By the early part of the revolutionary year 1848, the Crown had not only come to regard the idea of a constitution as acceptable, but had caused a draft for a constitution

to be prepared. Ultimately, a national assembly chosen on the basis of nearly complete manhood suffrage was convened. Its labors culminated in the Constitution of July 5, 1849. It replaced an absolute system of unlimited monarchy with a modern and free Constitution. Not the least notable of its features was the introduction of manhood suffrage unmarred by property qualifications. The national legislature composed of two houses was to exercise full law-making powers.

The Constitution of 1849 did not long remain in its original form. Already in 1848, Denmark got into difficulties over the two duchies Schleswig and Holstein, and three brief wars were fought before the question of the duchies was settled, presumably satisfactorily, in 1852. The question of Schleswig and Holstein involved, among other things, the Danish Constitution and its applicability or extension to the duchies, and led to some modification of the Constitution (in 1853 and again in 1863). Denmark finally lost the duchies in 1864, when Prussia and Austria took them. As a result, the Constitution was once again revised. The revision, which may be called an amputation, led to the new fundamental law of 1866. Its provisions gave property owners the upper hand in the elections to the first chamber (12 of whose 66 members were henceforth to be appointed by the King) but retained in the main the liberal franchise provisions fixed in 1849 for the second chamber. Not until 1915 was the ground lost in 1866 fully recovered.

General Trends Since 1870

Broadly speaking, each of the four Scandinavian countries had thus made substantial progress in constitutional development by about 1870. Fundamental laws endowed with special sanctity had come to furnish the basis upon which government rested. The fundamental laws were designed to resist encroachments by the Crown rather than by the masses; the day when the clamor for speedier change for the benefit of the many would become serious still lay in the future. Several decades were to elapse before legislatures chosen by universal suffrage would determine parliamentary majorities, and give the legislative prizes to the numerically strong. Meanwhile a series of changes, often gained only at the expense of bitter debate and controversy, gradually brought these countries closer to full political democracy. Among the many reforms between 1870 and the close of the World War, the following may be singled out for mention.

In Norway, the personal power of the King came to an end in 1884, and the Storting became the source of all real executive power, in that ministries acceptable to it were thenceforth appointed. Manhood suffrage was introduced in 1898, and women were given the right to vote in 1908-1913. The dissolution of the union with Sweden in 1905 made Norway sovereign, and enabled the country to devote its attention to internal problems unhampered by the difficulties caused by the union for decades before its final dissolution. When the World War broke out in 1914, the Norwegians could look back upon nearly a decade of sovereign existence marked by growing industrialization, general economic prosperity, and a monarchy that was not an obstacle to the functioning of a fully democratic government.

In Sweden, the trend was in the same direction. In 1876, the office of Prime Minister was definitely recognized, and in a sense the foundation of responsible government was thus laid. At no time before 1914, however, was the Cabinet form of government fully grafted on the Swedish Constitution. This is suggested by the fact that in 1914, the King disregarded the ministry and forced it to resign by going over its head to the people. The incident was precipitated by the question of national defense, which excited the nation a good deal at the time. In general political developments in Sweden followed the pattern familiar to students of other Western nations. One of the last important achievements in the democratization of the country before the World War was the establishment of manhood suffrage in the year 1909.

Finland likewise followed the same path. Despite limitations imposed by lack of sovereignty, and more particularly by the policy of Russification after 1890, political life and institutions were modified to meet the changing needs of a changing society. The most important reform came in 1906. The cumbersome four-estate Diet, resting upon an illiberal franchise, was scrapped and its place taken by a uni-cameral legislature of 200 seats. The suffrage law was also modernized, and the right to vote given to women as well as men. In all political matters, complete equality between the sexes now became a fact. The basic instrumentalities of democracy were thus successfully fashioned. Their operation, however, was seriously limited between 1908 and 1917, when Russification was continued in defiance of law and Constitution and promised in the near future to erase both.

Finally, Denmark was no exception to the general trend in

Scandinavia. After a generation of debate in parliament which engendered considerable and bitter political struggle the democratic elements in the country registered an important victory in 1901. In that year a Cabinet was formed in conformity with the broad principle that the majority of the legislature shall determine the composition of the ministry. At the time, Denmark—as well as Sweden and Finland—was still behind Norway in suffrage legislation. It was not until 1915 that a basic reform was effected. The new Constitution of 1915—carried with the support of all the political parties in the country—provided among other things for universal suffrage, and gave women equal political rights with the men. This reform made the political emancipation of the Danes as complete as legislative enactments permit, and introduced democracy in the fullest sense of the word.

Norway

Norway is a limited hereditary monarchy. While the executive power is vested in the King, he exercises it in Council only. He has a suspensive veto over ordinary legislation, and none over measures of constitutional character. Neither has he the right to dissolve the Storting. It is the Cabinet that is the real executive of the country. Its members must not be under thirty years of age, and women as well as men are eligible to it.

The judiciary is separate from the other branches of government and in no way subordinated either to the executive or the legislative. Its members are appointed on the basis of merit, and are free from electoral and other similar pressure. The system of courts is topped by the Constitutional Court of the Realm which handles cases that may be brought by the legislature against members of the Cabinet, of the Supreme Court or of the Storting for crimes and misdemeanors committed in their official capacity.

The legislature consists of 150 members. The constitution provides that one-third shall represent urban constituencies and two-thirds rural Norway. The legislature is chosen on the basis of universal suffrage. Elections are proportional, and take place every third November. In April, 1938, the electoral period was extended to four years, and in the future the parliament will therefore be chosen for four years.

For purposes of legislation, the parliament organizes, at the beginning of the session, into two "houses." One-fourth of the membership forms the Lagting, and the remainder the Odelsting. Legislation ordinarily originates in the latter. In practice, all important decisions are made, however, by the united parliament. In the event of a disagreement between the two "houses," a plenary session is held, in which two-thirds majority voting prevails. At least one-half of the members must be present before the legislature is competent to act. All members serve on one of the permanent committees of parliament; no member serves on

more than one. In addition to the ordinary functions of a legislature in a democratic constitutional monarchy, the Norwegian Storting performs special functions. For instance, only the parliament can naturalize aliens. The rights of the citizen are guaranteed by a bill of rights based on the provisions of the Belgian Constitution of 1831.

Denmark

Denmark, especially since the Constitution of June 5, 1915, went into effect, has also been a fully democratic monarchy. While the executive power is vested in the King, he exercises his authority through a responsible ministry. Constitutionally the King can "do no wrong," which means that it is the ministry that is strictly accountable for the government of the nation. Both responsibility to the legislature and the possibility of impeachment of ministers furnish adequate control of the executive.

The legislature consists of two houses. The lower house (the Folketing) of 149 members is chosen by Danish citizens of 25 years of age, irrespective of sex. It is elected for a period of four years. The upper house (the Landsting) of 76 members rests on a slightly different basis. For the right to vote for members of the upper chamber, the age limit of 35 years is imposed. There is no difference, in either house, between the franchise qualifications and the right to membership; all who are eligible to vote are eligible to seats. Nineteen members of the upper house, however, are co-opted and the remainder chosen indirectly for a period of eight years. One-half of the membership is renewed every four years.

After a decade of discussion concerning constitutional changes, a bill providing for important amendments was introduced in the legislature in 1938 and passed with substantial majorities in 1939. The most significant changes proposed were two. The first abolished the upper house. The second lowered the voting age to 23 years. The amended Constitution also provided for increased use of the referendum, whereby certain important measures can be submitted to the electorate for decision. In accordance with the provisions of the Constitution of 1915, the new proposals were submitted to a national vote. While the majority of the voters were in favor of the changes, the total majority favoring the bill did not reach 45 per cent of the total registered voters because many voters stayed away from the polls. It therefore failed of acceptance. In view of the support given the

bill in parliament and out it appears to be safe to predict that it will become the law of the land in the near future.

In common with the other Scandinavian countries, the judiciary consists of an appointive body, and courts function wholly separated from either legislative or executive interference.

Sweden

In Sweden also, the executive power is vested in the King. The King acts, however, only in Council. He likewise exercises legislative power, together with the Riksdag. Both King and Riksdag possess an absolute veto, but the royal veto power has been used sparingly during the past two decades. While foreign policy is in the hands of the King, the legislature in fact determines foreign affairs as well as other matters of importance. In fine, it is the Cabinet that formulates policy and applies it. This is only a way of saying that Sweden is a limited monarchy governed in accordance with the demands of modern democratic procedure. The Riksdag has the power to examine the function and labors of the Cabinet, and to impeach its members. It therefore effectively controls the government of the country.

The Swedish legislature is divided into two chambers. The lower house consists of 230 members, and the upper has 150. The lower house is chosen on the basis of universal suffrage for four-year periods. Elections take place every September 4, except in the event of dissolution before the end of the regular period. The upper house is chosen by County Councils and by specially appointed electors; elections to it are thus indirect and not direct. The members are chosen for eight years, one-eighth of the total being renewed annually. The voters for electors must be 28 years of age. Eligible for election—that is, for membership in the upper house—are men and women who have reached the age of 35, own real estate worth about $12,000, and who pay taxes on an annual income of at least $750. Both houses carry equal weight in legislation. Until 1921, the Speakers were appointed by the King, but since that time they have been chosen by the two houses.

The Constitution provides for the appointment, in each regular session of the parliament, of two parliamentary officials whose special task it is to supervise on behalf of the legislature the civil and military administration of the country. These officials receive complaints of citizens against the officials of the Government concerning the performance of their duties, and are empowered to

have recourse to the courts. This manner of safeguarding the rights and freedom of the citizen is very effective, and fully compensates—together with the democratic vigilance of the legislature—for the absence of a specific bill of rights.

The Judiciary is, if anything, more independent than in Norway, and has enjoyed for generations an enviable reputation for competence and impartiality.

Finland

The Finnish Constitution is the only Republican Constitution in Scandinavia. In common with Sweden, Finland has no uniform written fundamental law. It consists of the Form of Government which established the Republic in July, 1919, and of certain other laws relating to the composition and functions of the legislature, the control of administration by the parliament, the right to vote and the like.

The chief executive is the President, chosen by an electoral college of 300 for a period of six years. The right to vote for the electoral college is uniform and extends to all citizens irrespective of sex who have reached the age of 24. The successful candidate must obtain at least 151 of the 300 votes in the college. The President acts in and with the Cabinet. He has the power of suspensive veto; he cannot prevent the enactment of laws beyond one general election, if the legislature persists in pressing a measure which has been vetoed. The Cabinet must, according to specific provisions in the Constitution, possess the confidence and support of the parliament.

The legislature is a uni-cameral body of 200 members. They are chosen by universal suffrage by means of proportional elections. The age limit for voters is 24 years. In the legislature, the rights of minorities are effectively protected by a provision in the Constitution which states that if one-third of the members favor postponing action on a bill, it is left pending till the next general election. Appeal to the electorate by a minority is thus made relatively easy. Initiative in legislation rests in theory with the President, but in fact legislative initiative is ordinarily exercised by the Cabinet. Members also can introduce bills. The Constitution contains provisions that amount to a bill of rights. It also provides for the appointment of two special parliamentary officials whose function is the supervision of civil and military administration.

The position of the Finnish judiciary is in most respects

similar to that of the Swedish judiciary. Both derive in fact from a common historical evolution extending over centuries, and in recent decades pertinent precedent and example have been drawn upon in the effort to introduce more efficient ways of administering justice.

Responsible Government

Since the middle of the last century, the Scandinavian States have been approaching responsible or cabinet form of government. During the past twenty or thirty years, this development has culminated in ministries responsible to parliaments. Government is carried on in conformity with the views and objectives of the Cabinet, which in turn derives its authority from the support it receives in the legislature. In other words, the real executive has come to be a group of Ministers who function as the executive committee of the legislative branch.

The constitutional basis of the Cabinet system, however, remains partly undefined. Only in Finland does the fundamental law of the land expressly provide for responsibility to parliament. It states in substance that Cabinet members "must possess the confidence of the parliament." In the other three countries, responsibility has grown partly out of the constitutional arrangements that point in the direction of responsibility (in the case of Denmark), and partly out of the practical consequences of government by "King in Council." In Sweden, to be sure, the Constitution does not prevent the King from acting against the advice of his ministers, and while the King's decisions must always be countersigned by the ministers, signature does not mean that responsibility has been assumed. If the decision is unconstitutional, in the opinion of the minister, he must refuse to countersign. But the King no longer makes use of his power to exercise personal government. Not since 1914 has the King forced decisions not acceptable to his Ministers. The procedure prescribed by the Constitution has therefore become a mere formality. For more than a quarter of a century, Sweden has been no less wedded to responsible government than its Northern neighbors.

In general, parliamentary government in the North has disclosed certain common characteristics which deserve mention. In the first place, the general principle that a Cabinet should have the positive support of a majority in the parliament has not always been observed. The well-known rule in French parlia-

mentary practice that a new Cabinet must secure a vote of confidence before it begins to function has likewise been disregarded. The Scandinavian Cabinets tend to operate so long as they are tolerated. Only when the dissatisfaction of the legislature is manifest do Cabinets make room for a new ministry. Secondly, the question of what the character of opposition should be that will force resignation has been broadly speaking answered in the same way. For instance, Cabinets have failed on several occasions to resign when majority opposition on a given measure was created by the combination of two parties whose views on general policies were known to be sufficiently irreconcilable to prevent co-operation in the formation of a ministry. Thirdly, the technique of parliamentary government has therefore obviously not yet been sufficiently pointed to indicate clearly when a Cabinet should resign. Parliamentary votes of lack of confidence, the fact that most ministries have been coalition ministries and that dissention within the group occasionally appears, and general elections, have been the most frequent reasons for Cabinet changes.

Fourthly, none of the countries has formulated a definite answer to the question, When a Cabinet crisis has occurred, how is it to be solved? In none of them has the rule been clearly recognized that a parliamentary opposition, upon becoming successful enough to cause resignation, assumes responsibility for the formation of a new Cabinet. Ordinarily this rule has been followed, but on occasion it has been completely disregarded. In such instances, the King—and in the case of Finland, the President—has discharged an important function in contributing to the solution of the problem. On a few occasions, recourse has been had to dissolution of parliament in order to furnish a new basis for the ministry. This happened in Sweden in 1914, in Denmark in 1920, and in Finland in 1924. Resort has also been had to brief "civil servants" ministries: in Sweden and Denmark in 1920, and in Finland in 1924 and 1926. Especially since the middle twenties, however, the ordinary procedures of parliamentary government have prevailed. Cabinet and parliamentary opposition have in practice increasingly assumed the relationship implied by these two basic elements in a functioning democracy.

Note should finally be taken of the tendency to increase the powers of the Cabinet, seemingly at the expense of the legislative branch. During the World War, considerable legislative powers were given to the Cabinets. In the course of 1939, the threatening international crisis, and the war that broke out led to

a new "crisis Government" characterized by the grant of extraordinary powers to the Government. But this tendency was in evidence even before war clouds began to gather. The broadening domain of social legislation in these countries before and after 1929, and more particularly the consequences of the depression after 1929, markedly expanded the sphere of the "Social State." This brought with it new administrative and other tasks the discharge or control of which necessarily had to be left in the hands of the ministries. The general result has been that just as the scope of the functions of the State has widened, the position of the executive has been strengthened. This trend has not meant that legislatures have become docile or unmindful of their part in the transaction of public business. The legislatures have remained vigorous and active bodies, and the delegation of new powers to the Cabinets has not shifted the center of political life from the law-making assemblies.

Provincial and Local Government

For purposes of provincial administration, the four countries are divided into districts or counties. The counties are headed by governors appointed by the central Government. The duties of the governor are manifold, and range all the way from the execution of legislative measures and the supervision of administration to the promotion of the general interests of his province. Under the governor are various officials whose duties and work fall within the limits of their superior's domain.

In Sweden and Finland the principle that local affairs should be administered by the citizens themselves has been observed since time immemorial. Even when royal absolutism prevailed in fact if not in name, and government meant rule by the monarch served by a bureaucracy wholly dependent on him, the people of Sweden-Finland retained considerable powers of self-government. In the cities, self-government was especially well developed. In the rural sections the medieval assembly of the hundred, and the parish assembly performed the functions of local government. Later, local self-government formed the natural basis for the work of the Riksdag: its members came to Riksdag accustomed to public business. In other words, local government in Sweden-Finland was for generations a school for education in the art of active citizenship. Modern legislation reforming municipal government, begun by laws enacted in 1862 in Sweden

and in 1865 in Finland, therefore built upon an old and solid foundation.

In Denmark and Norway, early local institutions were erased by the omnipotence of royal absolutism, which was established in the sixteen-sixties and remained undiluted until the nineteenth century. It was not until 1837 in the case of Norway, and until 1837-1868 in that of Denmark, that municipal self-government was introduced. The degree of local self-government established during these years represented for all practical purposes a new element in the life of the Norwegian and the Danish people.

In all four countries, however, local government did not mean democratic local government until after 1900. Even after the reforms between 1830 and 1870, municipal suffrage was tied to property qualifications. Property qualifications were removed in degree as the movement for universal suffrage gained ground. Well-nigh complete democratization was achieved in Norway in 1901-1919; in Denmark in 1908; in Sweden 1909-1918; and in Finland in 1917-1919. Since the close of the World War, the greater cities in particular have had local governments in which Socialists constitute the majority group.

In Sweden and Finland, city councils have replaced the old-fashioned town meeting and have become in a sense municipal parliaments whose main business is to deal with questions of policy. Their membership is comparatively large, and ranges from 15 to 60; Stockholm has a council of 100 members. The actual administrative and other work is done by various boards and committees composed mostly of unsalaried or moderately paid citizens. With the growth of municipal business in recent decades, the problem of obtaining adequate management and personnel has become increasingly pressing. The problem has been solved in Finland by the introduction of City Directors who are salaried experts in municipal administration. Elsewhere, also, paid employees of various grades have come to play an ever greater part. While the field of action within which municipal government functions is fairly extensive, the national government has begun to regulate in growing degree the work performed by the municipalities, and municipal organs have tended to become local agencies of central administration. This applies especially to social welfare legislation and work. National legislation, incidentally, imposes various limitations upon local taxation; in Norway and Denmark, for instance, it can exceed a

specified amount only with the special permission of the central Government.

The position and importance of municipal government have given rise to much discussion and debate in recent years. Mounting functions and services have created financial difficulties unknown in earlier days. Municipal independence, as against the national government, is not what it was a generation ago. Yet municipal government well serves its purposes, and honest and impartial handling of local affairs is one of its characteristics. This is no less true of rural than of urban communities.

CHAPTER III. PEACE-TIME TRENDS

The Problem of Constitutional Change

While the Scandinavian constitutions can be more easily changed than, for instance, the Constitution of the United States, they are distinguished by a rigidity not characteristic of ordinary statutes. In Denmark, Finland, and Sweden amendments require two decisions by the legislature, the second coming after a general election. In Norway, a proposal to amend is tabled until the next general election; the royal veto is wholly absent. In Finland, however, amendments can be carried through in a single session of parliament, provided five-sixths of the members can be persuaded to vote the question urgent. After such a vote, the matter can be finally decided by a two-thirds majority. The Danish Constitution contains a unique safeguard against easy amendment. After two consecutive parliaments have accepted a proposal to amend, the proposal is submitted to a national referendum. The verdict of the referendum is not rendered by a simple majority, however. Unless the proposal receives the support of 45 per cent of the citizens who have the right to vote, it fails of acceptance. That this safeguard—which enables the opponents of change to defeat amendments by staying away from the polls—is a real obstacle to modernization, was clearly shown in 1939. The case in point has already been mentioned. A new Constitution abolishing the upper house was adopted by a large parliamentary majority, and the national referendum likewise gave the Constitution a substantial majority. Because of the large number of "easy chair" voters who did not go to the polls, the measure failed to obtain the requisite support of 45 per cent of the registered voters and fell through.

Yet the fundamental laws of these countries have been modified in other ways than by formal amendment. For instance, changes *intra legem* have given Norway, Sweden, and Denmark responsible, parliamentary government (in Finland, as has been noted, responsible government derives from a specific constitu-

tional provision). Some changes have in all likelihood also taken place *contra legem*. Such changes involve the question of how far the Constitution is safeguarded by action by the courts able to pronounce if and when legislative acts are contrary to the Constitution. Only in Norway has this problem been solved by the established doctrine of public law that the courts have the power of judicial review. In Denmark also courts may declare a law unconstitutional, but have never done so, while in Norway legislation infringing on civic rights has been on occasion declared null and void. In Finland and Sweden, the question of judicial review is still a subject of discussion.

Suffrage, Elections and the Party System

Since the establishment of universal suffrage—Norway, 1898-1913; Finland, 1906; Sweden, 1909-1921; Denmark, 1915—complete democracy has of course prevailed. The voting age is somewhat higher than might be expected: Norway and Sweden 23, Finland, 24, and Denmark, 25. When universal suffrage was introduced, it was felt pretty generally that provision should be made for the "just representation" of minorities. This was the main reason for the introduction of the proportional system of representation, which went into effect in Finland in 1906, in Sweden in 1909, in Denmark in 1915, and in Norway in 1919. While the actual operation of the system varies in the different countries, it may be said to have resulted in as fair a distribution of seats in the legislatures as could be expected. In Norway, however, "mathematical justice" in representation is prevented by the constitutional provision that irrespective of population, the cities obtain one-third of the seats, and the rural regions two-thirds. This *a priori* distribution favors small communities in particular. Efforts have been made to change it, but thus far without success.

The machinery of elections need not be detailed here. In all four countries, elections are based on official lists of voters, and provisions against interference or fraudulent voting are sufficiently adequate to reduce the likelihood of corrupt practices to well nigh zero. All disputes concerning elections are handled in a manner that is efficient and authoritative: In Denmark and Norway by the national legislature, and in Finland and Sweden by the Supreme Administrative Court.

The emergence and development of the modern party system have affected elections in many ways. In most instances, political

parties first appeared as groups or factions in the parliament, and not as organizations outside the legislature. The pioneers in party development were liberals or laborites; the rise of the Social Democratic Party in particular was important in the emergence of party organization which was nation-wide in extent, and designed to pool the electoral strength of voters on behalf of a definite party program. By the opening years of the present century, it had become the regular practice, in all four countries, for elections to be run by regular parties and for candidates for elective office to belong to a political party.

These developments have been partly reflected in constitutional legislation. For instance, the system of proportional representation established by law may be said to presuppose the existence of a party system. In Norway, public authority enters into the party situation in a novel way. The parties are entitled to grants from public funds—for travel expenses and the like—for the purpose of enabling them to look after the political welfare of voters in more remote districts, in order to safeguard their interests with regard to nominations. A certain amount of direct State control of the parties results from this arrangement, but it does not interfere with their regular functioning as bona fide voters' organizations.

The political parties in the four countries have performed, for a generation and more, three main functions that are ordinarily associated with political parties in democracies. In the first place, they have served, and continue to serve, as instruments for educating the electorate in political issues, imbuing the voters with political responsibility, and enlisting their support. Secondly, the parties have acted as the machinery through which candidates are nominated and the membership of the legislature —and of municipal and local government also—is chosen. Finally, the parties have of course acted as the organs which provide Governments. More frequently than not, coalition governments and not one-party governments have obtained. This has meant considerable and continuous co-operation especially between the major parties, which have been forced by the prevailing party situation to join hands in a manner not found in countries dominated by a two-party system.

The following table illustrates the party situation in the four countries, as reflected in the composition of the national legislatures in 1939. In the case of Sweden and Denmark, only the lower house is included.

	Denmark	*Finland*	*Norway*	*Sweden*
Communists and Radical Socialists	3	—	—	8
Socialists	64	85	70	115
Liberals	14	6	23	27
Farmers' Parties	30	56	18	36
Conservatives	26	25	36	44
Nazis, or groups close to Nazism	3	8	—	—
Swede-Finn Party	—	18	—	—
Smaller Groups	9	2	3	—
Total seats	149	200	150	230

Since 1930, the tendency in all four countries has been toward increasing co-operation between the Socialists and the small farmers. This trend has been especially marked in Finland and Sweden, where these two groups have dominated the Cabinets for several years.

In public opinion and in practice, members of the legislatures are considered as representatives of the nation as a whole, and not of the constituencies. They are supposed to act as independent agents, and not as mere servants of the voters in their electoral districts. Yet local interests and objectives tend to counteract this basic principle, and in the case of Sweden and Norway the element of localism is given relief by the provision that a candidate is eligible only in his own electoral district. But broadly speaking, the legislators in the Scandinavian countries are exceptionally free from the private and group pressures emanating from their constituencies; their legislative offices are not cluttered by visitors from home who take effort on their behalf and special advocacy of their interests for granted.

Aspects of the Legislative Machinery

The committee system is well developed in the four parliaments; committees may be called the basic part of the legislative machinery. In Norway, Sweden, and Finland practically all parliamentary business is prepared by committees, but in Denmark this rule applies with considerable modifications. A significant element in the committee system in the four countries is furnished by the committees on foreign affairs. These committees have all come into being since 1918. The reason is that during the past two decades, foreign relations have become more important than before. The committees serve a double function. In the first place, they act as parliamentary committees and deal with the field of foreign relations. Secondly, they also serve as special

advisers to the Cabinet, and may be required to function even when the legislature is not in session. The Cabinet therefore is able at all times to rely upon the committee on foreign affairs. In composition and function, these committees are strikingly similar in the four countries and illustrate the fact that these nations, by learning from each other, have succeeded in developing a common institution of unique importance.

On the whole, freedom of debate is ample, and in no case does the Speaker wield marked discretionary powers in debate. In Finland and Sweden, no limitation on debate exists, while in the Danish and the Norwegian legislature discussion may be brought to a close by a majority vote of the members. In general, debate is calm, matter-of-fact and devoted to practical questions rather than political oratory. The introduction of the annual budget frequently furnishes opportunities for general debate intended to impress constituencies as well as to persuade members of parliament, and interpellations often serve the same purpose.

The Nature of the Legislatures

A few decades ago, bi-cameral legislatures were either definitely established, or represented the goal toward which institutional evolution would seemingly naturally lead. Since the turn of the century, however, the tendency in Scandinavia has definitely been away from two-chamber parliaments and toward unicameral legislatures. As early as 1814, the Norwegian Constitution provided for a law-making assembly in which the upper "house" was little more than a committee of the lower. The Finnish parliamentary reform of 1906 meant a complete acceptance of the one-chamber legislature, and experience since 1906 has definitely shown that the absence of an upper house has not meant the dangers predicted by some at the time. During the past decade, Denmark has come to question the wisdom of retaining a two-chamber body. Especially since the early thirties, the demand that the upper house must be mended or ended has been frequently heard. It culminated in the attempt at constitutional reform—providing among other things for the abolition of the upper chamber—in 1939, which was prevented only by the fact that the number of voters who stayed away from the polls was large enough to prevent the requisite 45% of the number of registered voters from voting for the measure. Only Sweden has retained the bi-cameral system, and has made no attempt to change it. In view of the likelihood that the Danes will return

to the effort made in 1939, it is likely that three of the four states will shortly have uni-cameral legislatures. Having been considered almost a maxim in political science, the idea that two chamber law-making bodies are essential appears thus to have been abandoned by the majority of Scandinavians.

Government and the Citizen

The broad questions of how government operates on the citizen is obviously basic in importance. Government, especially in democracies, imposes restrictions and burdens, and also protects the citizen and intercedes on his behalf. The principles and constitutional or other provisions that secure his freedom represent central elements in the legal edifice upon which the State rests. They likewise furnish a measure of the extent to which government exists for the benefit of the citizen, and not the citizen for the benefit of the abstract State.

Turning first to the rights of the citizen as expressed in constitutions, it is to be noted that the Swedish Constitution reveals none. The only part of it that may be compared to a bill of rights is a brief section of an old law from the fourteenth century which imposes on the King the duty to maintain law and private rights. Legally the declaration is unimportant, since it does not prevent legislation by King and parliament jointly that might be destructive of the rights and liberty of the individual. The Norwegian Constitution contains a number of provisions safeguarding the citizen, and the Danish likewise guarantees the inviolability of the person, religious freedom, a free press, freedom of association, and the like. The Finnish Constitution also includes a lengthy section that embodies the principles of a democratic bill of rights.

In the light of constitutional provisions, it might seem that the difference between Sweden on the one hand and its neighbors on the other is marked. The difference, however, is more apparent than real. All the countries of the North are—and have been for a long time—imbued with a robust appreciation of personal freedom, a deep-rooted respect for the rights of private property, and a sensitiveness to the demands of justice in the relations between public authority and the individual citizen. The Swedish parliament has shown no greater inclination to limit or override the rights of the citizen than parliaments or governments restrained by bills of rights.

Political freedom and the rights of the citizen have not suffered by the absence of constitutional guarantees, and Swedish legislators have shown no tendency to invoke a power which is of purely theoretical significance.

Yet the rights of the citizen or of property have long since ceased to be interpreted in a narrow and dogmatic spirit. Religious freedom, the freedom of press and association, free speech, and the like are uncompromisingly recognized, subject of course to the demands of morality and consideration of public welfare. But property rights and economic rights have come to be looked upon in a new light. Social and factory legislation, forestry conservation, town-planning statutes, regulation of building, compulsory arbitration in labor disputes, and other similar legislation reflect the extent to which rights of property have been modified when public good indicated the need for restrictions. Semi-confiscatory measures, state supervision of some forms of business, state monopolies, especially in liquor, tobacco and cereals, likewise testify to the abandonment of the earlier inviolability of property and individual rights. In short, nineteenth-century liberalism has increasingly yielded ground to the demands of social welfare.

This trend has come to be accepted as desirable and natural. Basic in its acceptance was the growing realization that it is the duty of the State to help and sustain the citizen in distress. The Socialists were originally the main supporters of state activity on behalf of the masses. Now the supporters of humanitarian policy include, practically speaking, all classes. No party advocates the creed of *non possumus,* and the contest in our day is primarily not over principle but over ways, means and the extent of social legislation.

In the main, Government and administration are in the hands of an exceptionally competent personnel. Public opinion demands honesty and impartiality in public servants. Appointments based on "merit and ability" are required by law in Finland and Sweden, and while the law in Denmark and Norway does not specifically impose the same requirement, the civil service in both is no less well qualified. In all four countries, the civil service has in the main escaped the blight of party politics, and has retained its status of an independent corps of public servants. Security of tenure is ordinarily great enough to prevent exposure to outside influences. The civil servant at worst is likely to be an unimaginative, overbearing, but honest bureaucrat, and at best

an official who is no mere cog in an administrative machine, but a dependable adviser, and incorruptible in the discharge of his duties.

"Direct Government"

The Scandinavian constitutions make provision for the citizenry, when acting in matters political, in only one way. That is to say, the citizenry is defined as a politically functioning body in terms of the electorate. With minor exceptions, the legislative processes make no room for such instrumentalities of "direct government" as the initiative or the referendum. The reason is that the conditions which the initiative or the referendum are intended to correct have been conspicuously absent. Corruption in the legislature is practically speaking non-existent; the electorate is sufficiently alert to correct political evils by the use of the ballot; and members of parliament have not been exposed to the solicitation or pressure of "interests" in such a way as to create a demand among the voters that the legislature must be curbed lest the common good suffer, or be driven to action on behalf of beneficial national objectives.

Only in Denmark has the referendum been made a part of the legislative machinery. Its use is limited, however, to a specific instance. After a constitutional amendment has been accepted by two consecutive parliaments, its fate is decided, as has been pointed out, by a national referendum. In all four countries, the referendum has been occasionally used, even if specific constitutional provision gives it no legal force. Thus the question of selling the Danish West Indies to the United States was submitted in 1916 to a popular vote. The fate of prohibition was decided by a referendum in Norway in 1919 and 1926, in Sweden in 1922, and in Finland in 1931. In each case, the referendum was consultative and did not furnish a legal mandate binding the legislature, but the verdict of the referendum was accepted by the parliament and was later translated into law, except in the case of Sweden, where the referendum prevented the enactment of a prohibitive law.

Justice and the Courts

The administration of justice is entrusted to courts which are of three kinds: lower courts (courts of first instance), district courts, and supreme courts. The judges are appointed by the

government for life, except in the case of some of the local courts in Sweden and Finland, which are organs of the municipality.

In both Sweden and Finland, the functioning of the courts involves a novel lay element. The rural lower courts still retain the organization that had been evolved in the Middle Ages. The court consists of a judge and a number of citizens chosen by the voters in the district, usually for a period of from three to six years. These lay members of the court constitute the jury, but not in the ordinary sense of the word. They are not only a fact-finding body, but participate with the judge in rendering the verdict. More than that, the lay members of the court, who share in all the work of the court, render the verdict by themselves if they are unanimous in formulating a decision that runs counter to or differs from the verdict favored by the judge. This system has done much to strengthen the confidence of the people in the lower courts in particular and the administration of justice in general.

The actual handling of cases in Finnish and Swedish courts still rests on the basis laid down by the so-called "land-law" of 1734. The procedure is arid and formal; most of it is not oral but in writing. In the district courts oral presentation of cases is rare, and in the supreme court non-existent. For the past several years, more modern and efficient methods of procedure have been worked out in both countries and will no doubt result in substantial improvement in the present functioning of the courts.

In Denmark and Norway the ordinary jury is an institution of long standing. A system of lay judges—in the lower courts and in the district courts—has also been introduced, and since 1936 lay judges have participated in the handling of most criminal cases. As regards procedure, it is more in conformity with modern procedure than Swedish or Finnish procedure.

Civil and criminal law is embodied in statutes, and statutory law therefore guides the courts. "Judge-made" law or the use of legal precedent is therefore almost completely absent, and in no case plays the part familiar in English or American practice. The concept "the rule of law" means two things in Scandinavia. First, that law should be applied and interpreted by courts free from interference or influence, and able to perform their functions in an impartial manner. Second, that in deciding questions of law, the court should formulate its judgment according to the rules—as laid down in legislative enactments—formulated by the

representatives of the people and known, through the law code, to the citizenry at large. This means among other things that law is not only a mysterious and complicated science known to specially trained lawyers, but a body of rules available to scrutiny by laymen and capable of comprehension by them.

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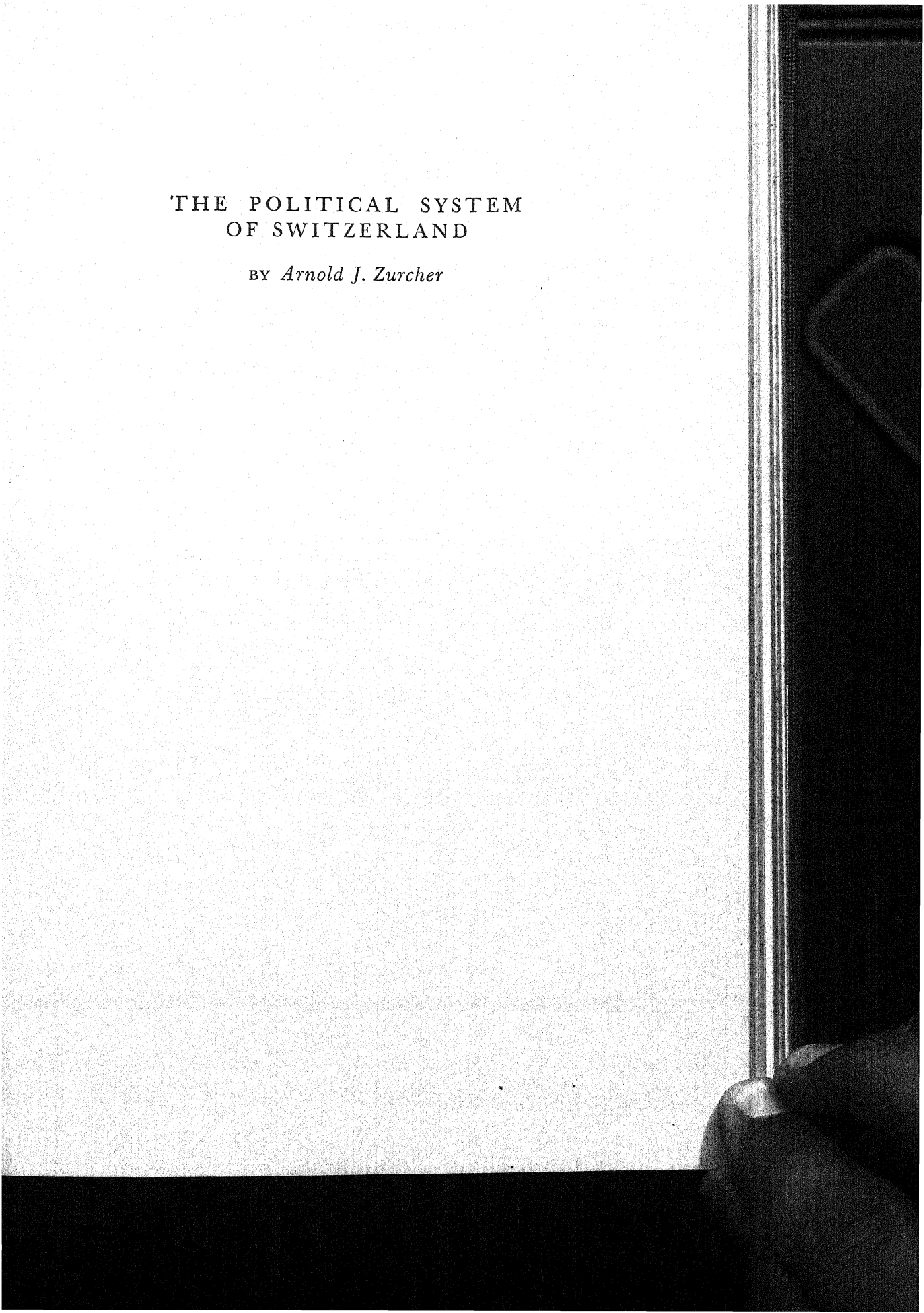
THE POLITICAL SYSTEM OF SWITZERLAND

BY *Arnold J. Zurcher*



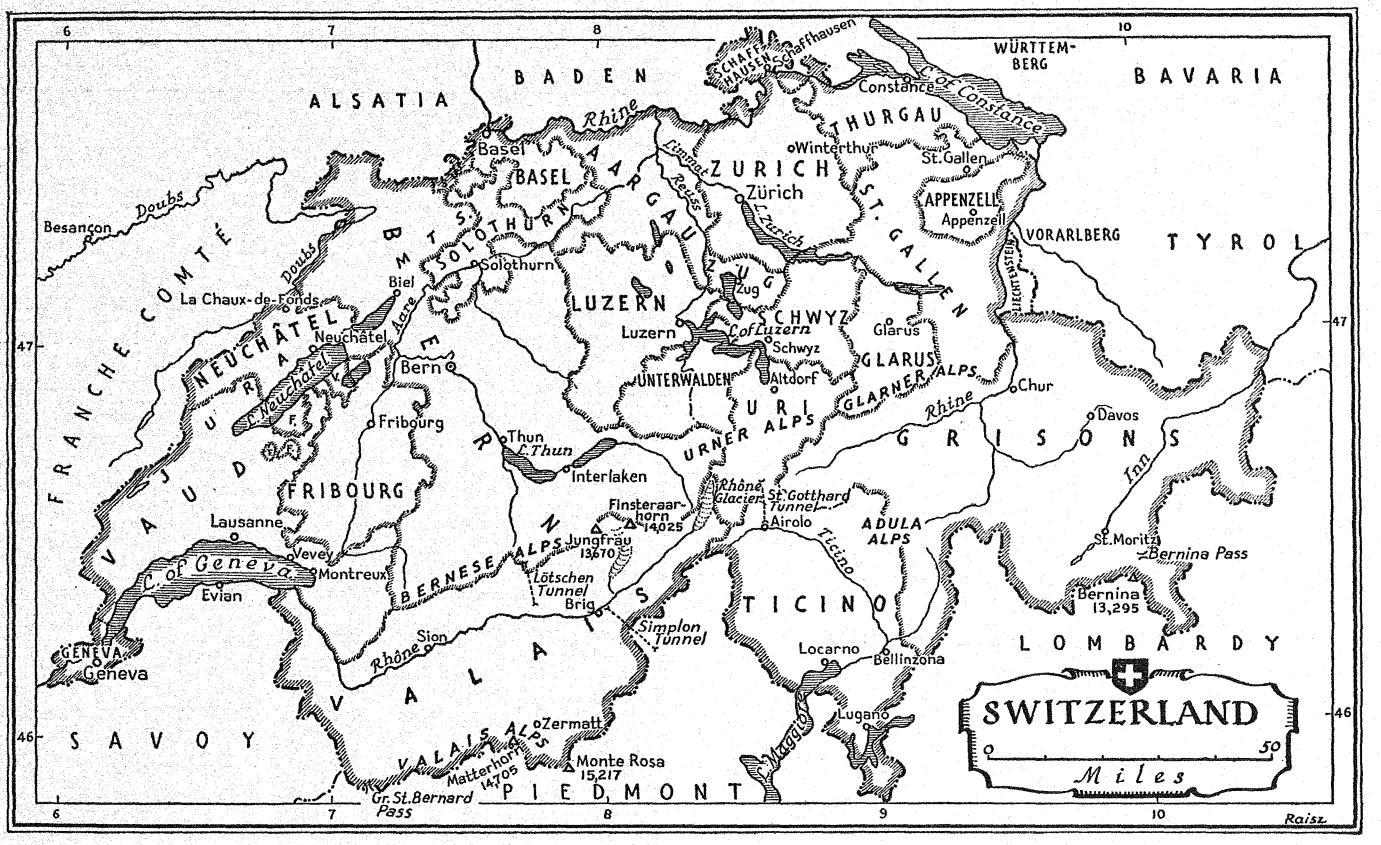
CHAPTER I. THE NATION AND ITS POLITICAL INSTITUTIONS

A Preliminary Survey

Physical Characteristics. The republic of Switzerland, known by the formal title of the Swiss Confederation, is a federal state of 25 semi-sovereign cantons and half-cantons,[1] with a population numbering about four millions. Its territory, roughly equivalent to that of Holland or Denmark or to the American state of Maryland, is inclosed by the frontiers of the three great Continental powers, France, Germany, and Italy. Few states have been less favored by nature and physical circumstance. The high Alps and the Jura range across Switzerland's domain and render more than 22 per cent of her area entirely unproductive. Much of the remainder is suitable only for grazing purposes or for woodland; and only some 35 per cent is actually devoted to agricultural production. Nor is the basis for industry much more promising. Mountains and valleys yield no coal or metallic ores, and the broken terrain of the country makes transportation and communication difficult. About the only natural industrial resource of moment is hydro-electric power, of which Switzerland has an abundance.

[1] The Swiss cantons and half-cantons in the order of accession to the Confederation are as follows:

1. Uri
2. Schwyz
3. Unterwalden, divided into the two independent half-cantons of Upper Walden; Lower Walden
4. Luzern (Lucerne)
5. Zürich
6. Glarus
7. Zug
8. Bern
9. Solothurn
10. Fribourg
11. Basel, divided into the two independent half-cantons of Basel Country; Basel City
12. Schaffhausen
13. Appenzell, divided into the two independent half-cantons of Appenzell Exterior Rhodes; Appenzell Interior Rhodes
14. St. Gallen
15. Aargau
16. Thurgau
17. Grisons
18. Vaud
19. Ticino
20. Valais
21. Geneva
22. Neuchâtel


SWITZERLAND
Miles
50
ALSATIA
BADEN
BAVARIA
WÜRTTEMBERG
TYROL
VORARLBERG
SAVOY
PIEDMONT
LOMBARDY
FRANCHE COMTÉ
VAUD
NEUCHÂTEL
FRIBOURG
BERNESE ALPS
VALAIS
VALAIS ALPS
BASEL
SOLOTHURN
AARGAU
ZURICH
THURGAU
APPENZELL
ST. GALLEN
LUZERN
UNTERWALDEN
SCHWYZ
URI
GLARUS
GLARNER ALPS
URNER ALPS
GRISONS
TICINO
ADULA ALPS
GENEVA
LIECHTENSTEIN
Rhine
Doubs
Aare
Reuss
Limmat
Rhône
Ticino
Inn
Basel
Zürich
Winterthur
St. Gallen
Appenzell
Constance
L. of Constance
Besançon
La Chaux-de-Fonds
Biel
Solothurn
Neuchâtel
L. Neuchâtel
Bern
Fribourg
Thun
L. Thun
Interlaken
Zug
L. Zurich
Luzern
L. of Luzern
Schwyz
Altdorf
Glarus
Chur
Davos
Lausanne
Vevey
Montreux
L. of Geneva
Evian
Geneva
Jungfrau 13,670
Finsteraarhorn 14,025
Lötschen Tunnel
Brig
Sion
Rhône Glacier
St. Gotthard Tunnel
Airolo
Simplon Tunnel
Locarno
Bellinzona
Lugano
L. Maggiore
St. Moritz
Bernina Pass
Bernina 13,295
Zermatt
Matterhorn 14,705
Monte Rosa 15,217
Gr. St. Bernard Pass
Raisz

Despite these adverse physical circumstances, Switzerland has developed an economy which is reasonably stable and fairly prosperous. Somewhat more than a fourth of her population is engaged in agriculture or dependent upon it; the vast majority of the remainder makes a living from industry or allied pursuits. Since she lacks many essential industrial materials, and since her agrarian production will not suffice to feed her own population, the evolution of this economy has required extensive trade with foreign nations. In normal times, Switzerland has a larger *per capita* volume of foreign trade than any other nation in the world. The coal, the metals, and the agricultural staples which she imports are paid for with dairy products, textiles, and highly specialized manufactures, such as watches and precision instruments of various sorts. The normal excess of imports over exports is made up by the revenue from the tourist trade and by the return from external investment and fiscal services.

Demographic Features. One of the most unique and challenging features of Swiss nationhood is its violation of the nationalistic canons of demographic and cultural unity. The population of Switzerland includes three different language groups, German, French, and Italian. Approximately three million Swiss use the first of these languages; somewhat over 800,000 use the second; and about 250,000 use the third. In addition some 50,000 use a dialect known as Romansch, which has some literary significance. The linguistic groups, moreover, are geographically quite sharply separated from each other by the cantonal boundaries. Thus the Ticino is almost exclusively an Italian-speaking canton; Geneva, Vaud, Neuchâtel, and Valais are almost exclusively French; and all the remaining cantons, except Bern and Fribourg, are almost exclusively German. In Bern the German population predominates over the French in the ratio of five to one; and in Fribourg the French population predominates over the German in the ratio of two to one. It must be added that linguistic interpenetration among the various cantons is becoming a noticeable fact. Moreover all the languages, including even Romansch,[1] are regarded as official for matters relating to the federal government and administration; and there are few educated Swiss who cannot use two or even three of these languages. Notwithstanding these facts, Switzerland remains a nation with three major and geographically quite sharply distinguished lin-

[1] Romansch was adopted as a national language in a constitutional referendum held on February 20, 1938; see *Statistisches Jahrbuch der Schweiz* (1937), pp. 412-413.

guistic communities who probably have as many cultural affiliations with their respective linguistic brethren in the contiguous great nation-states of Germany, France, and Italy as they have with each other.[1]

Religious Differences. Another centrifugal factor affecting Switzerland's nationhood is the confessional cleavages. Through Switzerland runs the boundary line of the Reformation, Zwingli and Calvin, with other Swiss, having helped to establish it. It is a line drawn with astonishing intricacy. Avoiding the linguistic boundaries, it divides both the German cantons from each other as well as the French. Among the latter, Vaud, Geneva, and Neuchâtel are predominantly Protestant, whereas Fribourg and Valais espouse the older Christian faith; among the German cantons, Zürich, Bern, Glarus, Thurgau, and both of the Basel half-cantons are overwhelmingly Protestant; while Luzern, Zug, the two half-cantons of Unterwalden and the canton of Solothurn are overwhelmingly Catholic. Many of the cantons are themselves fairly evenly divided between the two branches of Christendom. This is notably true of St. Gallen and Aargau. Somewhat less than two-thirds of the entire population of the Confederation is Protestant; somewhat more than a third is Catholic. In addition there are about 18,000 Jews and some 50,000 who identify themselves with no religious confession.[2]

The Swiss a United Nation. Religious differences have in the past contributed their due share to internecine strife. For three centuries after the Reformation, the cantons fought amongst themselves on numerous occasions.[3] At the end of the sixteenth century, religious strife was the occasion for the partition of the canton of Appenzell into the two half-cantons, respectively, the Interior and Exterior Rhodes.[4] Even as late as 1846, the Catholic cantons of Luzern, Uri, Schwyz, Unterwalden, Zug, Fribourg, and Valais leagued themselves together into the *Sonderbund,* or Separate League, and began a rebellion which the Confederation had to put down by force of arms.[5] At the present time, Catholic Switzerland is almost entirely identified with the aims of a single political party, the so-called Catholic Conservative Party. Lin-

[1] These data on linguistic differences are taken from the *Statistisches Jahrbuch der Schweiz* (1936), p. 31.

[2] For the religious statistics, see *Statistisches Jahrbuch der Schweiz* (1936), p. 34.

[3] See F. O. Adams and C. D. Cunningham, *The Swiss Confederation* (London, 1894), pp. 170 ff.

[4] W. Oechsli, *History of Switzerland,* trans. by E. and C. Paul (Cambridge, England, 1922), p. 178.

[5] *Ibid.,* pp. 390 ff.

guistic differences have also occasionally caused trouble, or at least aggravated difficulties arising from other causes. Nevertheless, despite these religious and linguistic differences, and the internal discord which they have sometimes occasioned, Swiss legal and moral unity has grown firmer with each passing generation. Today there is no people in Europe among whom a sense of national unity and of patriotic devotion is more firmly fixed than among the Swiss. In a world grown somewhat weary of the too frequent reiteration of the principle of political "self-determination" for races and linguistic groups, the Swiss offer a splendid example of how statehood and national patriotism can be fostered in utter defiance of such a principle.

National and Constitutional Development

Origins of Confederation. Switzerland has evolved through the gradual unification of the cantons of which she is today composed. The first step in this process began in 1291 when serfs and freemen of the so-called Forest Cantons, Uri, Schwyz, and Unterwalden, made a Perpetual Covenant in which they mutually pledged themselves to protect their common rights and privileges against their feudal lords.[1] Of these, the most important were the Hapsburg rulers of Austria, themselves of Swiss origin, who, at the time, were serving also as Holy Roman Emperors. An attempt by the Hapsburgs to reassert their feudal authority met with the successful resistance of the three confederated cantons at the Battle of Morgarten in 1315. During the next forty years, five more cantons joined the original three. These accessions included the important cantons of Bern and Zürich. The enlarged Confederation won a second victory over Austria at Sempach, in 1386, and thereby vindicated its *de facto* independence. For two centuries and a half thereafter it maintained a precarious existence, the bonds of unity often threatened by secessionist movements among the member cantons and by inter-cantonal strife. Nevertheless the bonds held. Indeed they became strong enough to enable the Confederation to humble Charles of Burgundy when, at the end of the fifteenth century, that bold ruler aspired to Swiss conquests. Some of the member cantons and the Confederation as a whole also succeeded in making territorial acquisitions by their military prowess. Such acquisitions were usually

[1] This Covenant is translated and reprinted in J. M. Vincent, *State and Federal Government in Switzerland* (Baltimore, 1891), pp. 191 ff. The history of the formation of the Perpetual Covenant may be found in W. D. McCrackan, "The Real Origin of the Swiss Republic," *Report of the Amer. Hist. Asso.* (1898), pp. 357-362.

treated as subject areas and their respective populations were given a status of civil inferiority.

Character of the Ancient Confederation. In 1649 the Treaty of Westphalia finally released the Confederation from the nominal suzerainty of the Empire. By that time the membership had grown to 13 cantons, all German-speaking, the latest accession, that of Appenzell, having occurred in 1573. In the management of their internal affairs, the cantons acted as sovereign entities, great variations being exhibited by their respective polities. Some, like Bern, were aristocratic republics; others, like Zürich, were rigid oligarchies; and still others, like the Forest Cantons, were peasant democracies, political power being intrusted in them to direct assemblies of the citizens known as *Landsgemeinde.* The affairs of the Confederation, which included relations with foreign powers, matters relating to peace and war, and inter-cantonal disputes, were managed by a Diet which met at irregular intervals in one or another of the cantons. Although, in this assembly, a certain formal precedence was accorded the larger cantons, such as Bern and Zürich, each of the cantons insisted upon the substance of its equality with the others and behaved in a manner not unlike that of a sovereign state participating in an international conference.

Revolution and Restoration. As thus constituted, the ancient Confederation persisted until the time of the French Revolution. Then great changes occurred. In 1798 a French army invaded and conquered Switzerland. The invaders destroyed the cantons' historic internal social and political institutions, particularly those of an oligarchic and aristocratic character, altered their territorial extent, and, abolishing the organs of the old Confederation, welded the cantons together into a centralized State with democratic and representative governmental features resembling those of revolutionary France. This regime was known as the Helvetic Republic. The violation of political tradition, occasioned by this sudden and violent change, caused such dissatisfaction among the majority of Swiss citizens that five years later Napoleon, imperial successor to the French Revolutionists, partially restored the old Confederation and the former autonomy of the cantons by his so-called Act of Mediation (1803). With the fall of Napoleon, 12 years later, and the triumph of reaction all over Europe, the process of restoration was carried still further, an attempt being made in the Pact of 1815 to revive both the

Confederate and cantonal institutions of the eighteenth century.[1]

Modern Switzerland Is Created. But the basis of modern Switzerland had been firmly laid between 1798 and 1815; and no amount of restorationist activity could ultimately prevail against what had thus been done. The Act of Mediation had added 6 new cantons to the 13 which had formerly existed. These had been created chiefly out of French- and Italian-speaking territories which had been allied with, or considered as subject territories of, the formerly dominant German-speaking cantons. These new cantons were continued in the restorationist settlement of 1815 and three more, Valais, Geneva, and Neuchâtel,[2] all French-speaking, were added. The number of cantons was thus brought to its present total of 22; and Switzerland officially became a tri-lingual country. In time, moreover, the liberal, democratic, and centralizing influences, generated during the period when France controlled Switzerland, began to manifest themselves. After 1830, the power of the aristocracies and oligarchies was permanently destroyed in all the cantons where such power had been revived, and representative institutions of a popular character were universally introduced; and on September 12, 1848, following the brief *Sonderbund* War, already referred to, a new Constitution was introduced for the Confederation as a whole. This Constitution, based largely on the model of the American system of government, supplied a central political system with adequate and effective national authority and definitively transformed Switzerland from a confederation into a federal State. A complete revision of the new Constitution, in 1874, further augmented the powers of the central government and laid the legal foundations for the present governmental and political system of the Swiss State.[3]

Some Basic Constitutional Principles

Federalism. The basic constitutional doctrine upon which the government of Switzerland is now posited is therefore that of federalism. In the new federal Constitution of 1848, as revised in 1874, the Swiss cantons, like the 13 original states of the

[1] This period is well treated in Oechsli, *op. cit.*, pp. 302 ff.

[2] Technically Neuchâtel did not become a full-fledged canton of the Confederation until 1850, when the erstwhile sovereignty of the Prussian King was finally extinguished.

[3] The Constitution as amended up to 1935 may be found in Section I of W. E. Rappard and others, *Source Book on European Governments* (New York, 1937), pp. 19 ff.

American Union, allowed their erstwhile sovereignty to be so modified as to grant an adequate authority for national purposes to the central government of the Confederation. Besides the traditional control over foreign relations and questions of peace and war, this authority included a variety of prerogatives of an internal character relating to such matters as the currency, communications, commerce, weights and measures, naturalization and expatriation, higher education, conservation of natural resources, and necessary fiscal powers. In addition the government of the Confederation continued to enjoy its former authority to settle inter-cantonal disputes and to protect the integrity of the cantonal governments against invasion or domestic insurrection. To the cantons the federal Constitution reserved all powers not expressly granted to the Confederation, the rule in this respect virtually paralleling the provisions of the Tenth Amendment of the American Constitution.

Growth of Federal Power. Developments since 1874 have greatly altered the distribution of powers in favor of the government of the Confederation. Federal authority has been extended to such subjects as patents, water-power exploitation, the civil and criminal law, the alcoholic beverage traffic, aerial, maritime and surface transportation, banking, social welfare projects, industrial legislation, the arms traffic, public hygiene, and the production and marketing of grain. Federal ownership has been extended to the nation's telephonic and wireless communications systems and to the railways. Many new sources of federal taxation have been created; and a considerable number of federal subsidies to the cantons have been inaugurated. Combined with other factors, such as the growth of commerce and industry on a national scale, this augmentation of federal power has necessarily exalted the prestige and influence of the government of the Confederation at the expense of the separate cantons.

Federal Status of the Cantons. In spite of these developments, the cantons remain important elements of the Swiss constitutional system. To the cantons still appertain many of the essential prerogatives of government such as the maintenance of domestic peace and order, the care of social dependents, the construction of local public works and highways, the control of elections, the responsibility of providing for a system of public education, and the control of local government. It is by being a citizen of a canton that national citizenship is ordinarily acquired;

and the laws and regulations of the respective cantons still determine many of the citizen's ordinary civil rights in Switzerland. The cantons also play an important role in affairs which are predominantly the concern of the central government. Thus although the federal government determines the substance of most of the civil and criminal law, the courts which administer that law are almost exclusively cantonal. Similarly the cantons enforce the federal legislation relating to weights and measures and pure food standards. They likewise enforce federal military regulations, and raise and equip contingents for the federal army. Cantonal legislatures participate with the federal parliament in enacting laws dealing with such subjects as the relations of civil with ecclesiastical authorities and social insurance. With the concurrence of federal authorities, cantonal legislatures regulate, among other things, the freedom of the press, the domiciliary rights of resident foreigners, and the communal electoral rights of Swiss citizens from other cantons. The juridical personality of the cantons is also recognized in the composition of the federal organs of government. Notable in this connection is the principle of equal cantonal representation observed in the second chamber of the federal parliament, i.e., the Council of States (*Ständerat*). In this body each canton is entitled to two delegates and each half-canton, to one delegate. Of equal significance is the recognition of the cantons in the process of amending the federal Constitution. No change in that instrument can be considered legally adopted unless approved by a majority of the cantons as well as by a majority of all Swiss voters.

Democracy. A second important principle of Swiss political institutions is democracy. This principle has become so thoroughly engrained in the nation's political life, and is so ardently supported by the bulk of the population, that Switzerland and democracy have in recent times become almost synonymous terms. Application of the democratic principle to Swiss political life is to be discovered in the federal Constitution's formal abolition of all aristocratic and oligarchic privileges and in its guarantee that all citizens shall be equal before the law. Such application is also to be discovered in the equal electoral rights of all male citizens, 20 years of age or over; in the republican character of all the leading executive offices; and in the representative character of the cantonal and federal legislative assemblies. In addition the canton of Glarus and the four half-cantons into which

Appenzell and Unterwalden are divided, have continued their historic *Landsgemeinde,* or legislative assembly of all the citizens. Such an institution is, of course, more democratic in fact than a popular representative body. In the case of both cantonal and Confederation governments, moreover, Switzerland is at least one step in advance of most political democracies because of her use of the initiative and referendum. These modern instruments of direct democracy have, as we shall see, become so popular and have been in use for such a long period that they are now considered integral features of the nation's political practice.

Liberalism. Still another principle of the Swiss political system is liberalism. The federal Constitution and most of the extant cantonal instruments were adopted in the latter half of the nineteenth century when the liberal philosophy of government was dominant. Constitutional phraseology consequently stresses that philosophy at every point. The controlling influence of the federal Constitution is particularly exploited to guarantee all the traditional liberal freedoms such as the freedom of the press, of speech, of association, of petition, and of the courts. Liberal antipathy to martial authority is also expressed in the constitutional provision against a standing army. Equally significant, as evidence of the liberal cast of Switzerland's basic law, is its vigorous assertion of the duty of the State to provide free and compulsory instruction. The constitutional clause on this subject contains the injunction that the public schools shall be open to the adherents of all religious denominations and be so managed as not to infringe upon anyone's liberty of conscience or belief. This secularism in education secures expression in other directions, notably in the exclusion of the Jesuits and affiliated orders, in the prohibition of new convents or religious congregations, in the abolition of ecclesiastical jurisdiction, and in the emphasis upon the civil character of the marriage contract. In some cases the secularism of the Constitution verges upon anticlericalism, a condition explained by the lengthy conflict between the civil and ecclesiastical authorities in Swiss history. Still another expression of the liberal philosophy in the federal Constitution is to be discovered in the comparative freedom from political restrictions upon trade and commerce, and in the guarantee, implicit in the entire instrument, of private property and private enterprise.

Modified Liberalism. This last aspect of political liberalism has been modified in recent years as Switzerland, in common

with other states, has advanced projects of political collectivism and even rudimentary State Socialism. This has been done to overcome the baneful effect of economic crises, particularly of the economic depression after 1930, and to satisfy the demands of Switzerland's working-class population, of her farmers, and of other elements of her middle classes who believe that a substantial degree of State intervention would relieve the economic difficulties under which they have been suffering and increase their economic security. To protect her political integrity against subversive elements from Right or Left, and to safeguard her neutrality during the present hostilities in Europe, Switzerland has recently also placed moderate restrictions upon the liberty of organization and speech. These developments, however, have not yet acquired such proportions as to alter fundamentally the traditional liberal orientation of the Swiss polity.

Position of the Federal Constitution. This survey of the basic principles of Swiss political institutions may be concluded with a brief examination of the juridical position accorded the federal Constitution. This instrument is presumed to be the sovereign expression of the joint will of the people of the entire Confederation and of the cantons. Its formal supremacy over both cantonal and Confederation governments is unquestioned. On the other hand, the means of protecting that supremacy are juridically quite imperfect. As will be noted later, the Swiss Federal Tribunal, which is the Confederation's only court, is empowered to vindicate the supremacy of the federal Constitution and laws as against cantonal constitutions, laws, and administrative acts in all cases which may come before it. The Federal Tribunal thus possesses at least a limited power to protect the federal Constitution as against acts of the cantons. On the other hand, neither this, nor any cantonal, court possesses power of constitutional review as against federal legislation. In Swiss political theory, as in the theory of all Continental democracies, the legislative branch is regarded as the supreme organ of government; and whatever interpretations it may make of the clauses of the written Constitution are regarded as decisive and binding interpretations. In Switzerland the federal legislative organ actually embraces not only the representative federal parliament but also the voters at large who, as we have already noted, exercise the legislative power through the popular referendum. In the last analysis, then, the substantive integrity of the Swiss federal Constitution may be said to depend upon the self-imposed political

discipline of the federal legislature and of the Swiss electorate.[1] In practice, the provisions of the Constitution have been generally respected. At least this is one inference to be derived from the fact that since 1874 no less than 70 efforts have been made to change it in accordance with the provisions for its own amendment. Approximately half of these 70 efforts have been successful.[2]

Federal Legislative and Executive Organs

The Federal Assembly: (1) The National Council. The parliament of the Confederation is bicameral and is known as the Federal Assembly (*Bundesversammlung, Assemblée Fédérale*). Its primary and more popular house is the National Council (*Nationalrat, Conseil National*). It now consists of approximately 187 members, elected for a term of four years, suffrage being universal among males 20 years of age or over. Qualifications for membership in the National Council are the same as those required for voting; however, all clerics, executive and principal administrative servants of the Confederation government, and members of the second house of the Federal Assembly are specifically excluded. Cantons and half-cantons serve as electoral constituencies, representation being distributed among them in accordance with the ratio of one Councilor for every 22,000 inhabitants. Half-cantons whose population does not equal 22,000 are guaranteed at least one Councilor. In some 17 cantons which elect three or more National Councilors, parties and political groups secure proportional representation. Lists of candidates, equivalent to the number of Councilors to be elected, are submitted to the electors by the parties. Each elector may vote as many times as there are Councilors to be elected. Normally he distributes his votes among the candidates as they appear on some party list, substituting other names and even voting twice for one candidate, a privilege allowed by the electoral law. This behavior of the elector is important; for it is chiefly the votes cast by the electors for the candidates as individuals that determines the latter's standing when the seats are distributed according to the proportional electoral quota.[3] As in all legislative bodies elected according to a proportional plan, membership is fairly stable. In

[1] For a discussion of this subject see W. E. Rappard, *The Government of Switzerland* (New York, 1936), pp. 49 ff., 90 ff.

[2] For the amending process see p. 1000.

[3] For the Swiss system of proportional representation see H. L. McBain and L. Rogers, *New Constitutions of Europe* (New York, 1923), pp. 109-113.

the National Council elected in 1935, almost a fourth of the members had served from 5 to 10 years and more than a fourth had served more than 11 years. In that same Council somewhat less than a sixth of the members were lawyers; farmers, business men, and cantonal public servants were also numerous.[1]

The Federal Assembly: (2) The Council of States. The second house of the Federal Assembly is the Council of States (*Ständerat, Conseil des États*). In this body, as previously noted, every canton, no matter what its size or population, is entitled to two delegates, and every half-canton to one delegate. The total membership of the Council of States is thus 44. The concept of cantonal sovereignty and personality, still influential in Switzerland, is chiefly responsible for this equality of cantonal membership as, indeed, it is also for the very existence of a second chamber. To this same concept of cantonal sovereignty is to be attributed the circumstance that each canton determines how its delegates to the Council of States are to be elected, what their terms shall be and what compensation shall be paid them out of the cantonal treasury. At the present time the people in 21 cantons or half-cantons elect their State Councilors either by ballot or in their *Landsgemeinde;* in the four remaining cantons or half-cantons, State Councilors are elected by the representative legislatures. Terms of the State Councilors vary from one to four years, being longest in those cantons where they are popularly elected and shortest in those cantons where they are elected by the legislature.

Legislative Powers. The makers of the Swiss Constitution did not pay much attention to the orthodox theory of the separation of powers in establishing the Federal Assembly, since they conferred upon it all kinds of authority, legislative, executive, and even judicial. The enactment of laws dealing with federal matters are of course within its province. In addition it elects the seven members of the Federal Council who compose the executive department of the Swiss government; it also elects the commander-in-chief of the army when one is needed, the members of the federal judiciary, and other officials of the government. It declares war and concludes peace; ratifies treaties; issues amnesties and pardons; authorizes measures to guarantee the integrity of the cantonal governments and the domestic peace of the Confederation; disposes of the army; supervises the activities of the civil service; and even decides administrative disputes

[1] Statistics are derived from the *Statistisches Jahrbuch des Schweiz* (1937), p. 408.

and conflicts of jurisdiction between federal officials. Few parliaments have more miscellaneous duties.

Legislative Organization and Procedure. In exercising its power to elect executive, judicial, and other officials of the Confederation, its power to issue amnesties and pardons, and its authority to settle administrative disputes and conflicts of jurisdiction, the Federal Assembly acts as a unitary body, Council of States and National Council sitting together under the chairmanship of the president of the latter house. For all other matters, the two houses of the Assembly sit and act separately; and their concurrence is necessary to any parliamentary decision. Both houses hold an ordinary session annually; and they meet in extra session at the request of the Federal Council or of one-fourth of the members of the National Council or of five cantons. Each house elects a new president for each annual session, to whom is largely intrusted the determination of the daily order of business. Most of the new business of the two houses comes from the Federal Council, which has the duty of making innumerable reports and the privilege of initiating legislation. Projects of law may also be initiated by members of the two houses. When private members' projects are introduced, it is the custom of the houses to consider first their general utility and political wisdom; if the ensuing decision is favorable, the Federal Council is then called upon to introduce detailed drafts of the measures. Hence, in practice, the Federal Council virtually monopolizes the actual initiation of legislation.

In order to use the time of the houses effectively, the respective presidents try to apportion to each of them an equal share of the agenda presented by the Federal Council at the opening of each session. Most of the measures introduced in either house are eventually referred to committees which normally represent the proportional strength of the various political parties. These committees may present both majority and minority reports to the houses through *rapporteurs.* In case a difference of opinion arises between the houses on a pending measure, the respective committees having charge of it try to iron out the difference. Normally this is not difficult, since neither house is inclined to assume an uncompromising attitude. In accordance with the official position occupied by the various languages used in Switzerland, all parliamentary documents and decisions are published in both French and German, and some also in Italian; and par-

liamentarians are privileged to address their colleagues in French, German, or Italian.

The Federal Council. The scope and limitations of parliamentary activity at Bern will become clearer if we now turn our attention to the federal executive. As already indicated, this body is known as the Federal Council (*Bundesrat, Conseil Fédéral*) and consists of seven members elected by the Federal Assembly. Constitutional usage prescribes that Zürich and Bern, being among the oldest of the cantons and having the largest population, shall always be represented. A similar right is guaranteed in the same manner to Vaud, largest of the French-speaking cantons. Usage further prescribes that another Romance canton besides Vaud shall always be represented. The legal term of service is four years. The prerogatives attributed to the Federal Council include the enforcement of laws and ordinances; the actual conduct of foreign affairs; the preservation of internal security; the immediate supervision of all federal officials, civil and military; and the administration of federal finances. Although the administrative detail to which these prerogatives give rise is committed to seven separate administrative departments, each headed by one of the Federal Councilors, it is the theory of the Constitution that all important executive decisions shall be made by the Council as a body and that the Council shall assume corporate responsibility for them. In actual practice it would appear that many important executive decisions are made by individual Councilors.[1] By law, moreover, many activities, hitherto performed by the Council as a body, have been passed on to specific Councilors and by them to subordinates.[2]

The President of the Confederation. Annually the Federal Assembly designates a member of the Federal Council to serve as President of the Confederation and a second member to serve as Vice-president. The Constitution expressly forbids the reelection of an incumbent President or Vice-president. Usage requires that the Vice-president succeed the President and that the two offices rotate among the members of the Federal Council. Although the Presidency of the Confederation is an office of some dignity, it has none but purely formal prerogatives, the principal one being that of presiding over the deliberations of the Federal Council. Such official authority as the President may wield comes

[1] Cf. J. Dürsteler, *Die Organisation der Exekutiv der schweizerischen Eidgenossenschaft* (Aarau, 1912), p. 298.

[2] R. C. Brooks, *Government and Politics of Switzerland* (Yonkers, 1918), p. 128.

to him as a member of the Council and as head of one of the seven administrative departments.[1]

Executive Subordination to the Legislature. The unique character of the Swiss federal executive has been emphasized in numerous political commentaries. The theory of the Swiss Constitution appears to be that the executive is not an independent or co-ordinate branch of government but the servant of the Federal Assembly. This servitorship is implied in the Assembly's election of the Federal Council and in the Assembly's use of the Council as a sort of glorified legislative drafting bureau. Executive servitude is made still more obvious by the Assembly's supervision over the executive province. Because of the wide scope and miscellaneous character of the powers constitutionally committed to the Federal Assembly, that body's previous authorization or subsequent ratification must usually be secured by the Federal Council when it exercises prerogatives relating to foreign relations, to the armed forces, or even to the ordinary conduct of public administration. The Assembly, moreover, frequently issues directions, in the form of resolutions or motions, indicating the way in which the Council's functions shall be discharged. It is also customary for the Assembly to require detailed written reports on the general conduct of executive business; and it does not hesitate to question the Councilors orally or to interpellate them on the floor of the respective houses. It may be interjected here that Federal Councilors, although excluded from membership in the Assembly, have the privilege of attending all plenary legislative sessions or committee meetings and of participating in the debate. The most striking evidence of the subordination of the executive to the legislature in Switzerland is to be discovered in the fact that neither Constitution nor convention requires the resignation of the Federal Councilors should their policy conflict with the Assembly's; in such a case the Councilors merely change their policy in order to make it conform with the Assembly's expressed will.

Sources of Executive Influence. Despite what has just been said, it must not be concluded that the Swiss Federal Councilors lack influence on the course of public affairs. The very fact that the Assembly transfers to them most of the legislative initiative, combined with the Councilors' immediate responsibility for the conduct of the Government, gives them many opportunities to determine the tenor and direction of public policy. Nor does

[1] Cf. R. Hübner, *Die Staatsform der Republik* (Bonn, 1919), p. 231.

the constitutional supremacy of the Federal Assembly greatly hinder such activity on their part. In Switzerland as elsewhere—in Great Britain, for instance—the parliamentary responsibility of the executive serves to justify the exertion of executive discretion almost as often as it serves to check such discretion or to modify it. In this connection it should be recalled that the Swiss Federal Councilors are usually the leading politicians among the conservative and middle class liberal parties which dominate the Federal Assembly. This fact necessarily assures the Councilors a certain degree of partisan support in that body even though Swiss tradition frowns upon the exploitation of partisan discipline on behalf of the executive and requires that the Federal Council conduct itself in a non-partisan manner.

Lengthy Tenure of Federal Councilors. Still another factor which contributes to the practical importance of the Federal Council in the Swiss government is the Councilor's relatively lengthy tenure. Partly because of the Swiss habit of re-electing public servants as long as they wish to serve and partly because of the tradition that Federal Councilors shall not resign for political reasons, their actual term of continuous service usually exceeds by many years that of their ministerial counterparts in other governments. Thus Signor Giuseppe Motta, Federal Councilor from the Ticino, held office from 1911 to 1940, or much longer than any contemporary European dictator, not excepting that dictator whose native tongue is also Signor Motta's. Many other Councilors have approximated Signor Motta's record since 1848.[1] Certainly one consequence of this long period in office is the enhancement of the Councilor's official prestige, administrative skill, and political judgment, and therefore of his practical capacity for political leadership.

Post-War Executive Developments. Finally it should be added that Switzerland has not been immune from the contemporary tendency to strengthen executive power. Efforts to preserve her neutrality and protect her economy during the World War and during the present European War, combined with measures to combat the economic crisis after 1930, have necessitated the erection of a veritable crisis regime in the Swiss political system. One characteristic of this regime is the delegation by the Federal Assembly of "blanket" authority over matters hitherto regulated directly by statute to the Federal Council. On the basis

[1] On this subject see Hübner, *op. cit.*, p. 230; also, W. E. Rappard, *The Government of Switzerland* (New York, 1936), p. 80.

of this transferred power, the Council has issued ordinances vitally affecting personal liberties and private property. Occasionally, moreover, the Council has issued ordinances (*Notverordnungen*) relating to private law on no other ground than public safety or necessity.[1] This is a type of executive ordinance power which, though common enough in some Continental political systems, has hitherto been unknown in Switzerland. These developments, favoring the Federal Council at the expense of the Assembly, suggest that a new relationship between these two organs is coming into being, which, though contrary to the traditional Swiss principle of legislative supremacy and characterized at present as an emergency regime, bids fair to assume a permanent character.

The Federal Administration and the Judiciary

Administrative Departments. As previously stated, administration of federal affairs is distributed among seven departments, each headed by a Federal Councilor. These departments are as follows: (1) Political Affairs; (2) Military Affairs; (3) Justice and Police; (4) Finance and Customs; (5) Interior; (6) Posts and Railways; and (7) National Economy. As in the case of the American State department, the jurisdiction of the Swiss department of Political Affairs embraces some relatively minor domestic responsibilities as well as the foreign affairs of the Confederation. During certain past periods, this department was intrusted to the President of the Confederation; its headship and that of at least one other department thus had to be changed annually since a new President is elected within the Federal Council every year. This custom has been discontinued since the World War; and the Political department, like the other departments, continues under the same Councilor indefinitely. The miscellaneous federal duties attributed to the Interior department also permits comparison of that department with one of the same name in the American government and sharply distinguishes it from Interior departments of centralized Continental governments whose chief duty is the maintenance of internal security. The duties of the remaining Swiss administrative departments are probably self-explanatory. Of great importance among these remaining departments are those of Posts and Railways and of National Economy, the first because the Confederation owns and manages the

[1] On this general subject see Kurt Reber, *Das Notrecht des Staates* (Zürich, 1938).

postal, telephonic, telegraphic, wireless, and railway systems, and the second because of the increasing intervention of the federal government in economic affairs. It should be added that the Railway Administration, although under the jurisdiction of the department of Posts and Railways, enjoys a considerable degree of autonomy, having, among other things, an entirely separate budget. In recent years the duties of some of the departments have become so complex and numerous as to justify an increase in their number; but since their number is restricted to that of the membership of the Federal Council, an increase cannot take place unless the roster of the Council is expanded by a constitutional amendment.

Civil Servants and Public Employees. Since many federal duties are performed by cantonal officials, the personnel of the Confederation's civil service and its corps of public employees is less numerous than might be expected in view of its governmental responsibilities. Shortly after the World War, that personnel reached a total close to 75,000; since then, the number has been gradually reduced until today it is slightly above 62,000.[1] Of this number, almost 50,000 are employed in the publicly owned and managed communications and railway systems; and about 3500 more are employed in the Confederation's various monopolistic enterprises. Most of the civil servants and public employees are appointed by the Federal Councilors, acting as heads of department and subject to the authority of the Federal Council. Railway officials and employees are appointed by the Federal Railway Administration. By federal law, and ordinances of the Federal Council, the appointing authorities fix most of the conditions relating to appointment, dismissal, promotion, and the privileges of the public servant. Citizenship, a good character reference, a satisfactory level of attainment in the country's educational system, and, occasionally, specific training are required of candidates for the basic positions in each of the major levels of the various branches of the public service. Appointments are usually made on the basis of competitive examinations. The entire service is comparatively free of nepotistic or political influences and is unusually efficient. The rate of compensation, traditionally low, has been steadily rising since the World War; the attractiveness of the service is, moreover, enhanced by security of tenure and a generous pension system. Public employees and civil servants have their own service organizations. At present there are some

[1] *Statistisches Jahrbuch der Schweiz* (1937), p. 350.

10 such organizations and their respective rosters include a large percentage of both the Confederation and cantonal personnel.[1] In many instances these organizations have affiliated themselves with the Swiss Federation of Trade Unions.[2]

The Federal Judiciary. The judiciary is the most recently established organ of the Confederation government, its creation dating from the constitutional revision of 1874. Prior to that date such issues of a judicial nature as demanded a solution by a federal organ were referred to the Federal Council or Assembly. Indeed, as previously pointed out, the Federal Assembly still exercises some authority which might well be handled by a judicial body. The revised Constitution of 1874 provided for a Federal Tribunal (*Bundesgericht, Tribunal Fédéral*); and this was set up during the following year at Lausanne, capital of the Canton of Vaud. The choice of this site was apparently designed to remove the lingering dissatisfaction of French-speaking Switzerland with the fact that the rest of the federal government had been centered at Bern in German Switzerland. At the present time, the Federal Tribunal consists of some 24 judges elected for six-year terms by the Federal Assembly. The Constitution requires that the Assembly shall consider the claims of all three linguistic areas to representation on the federal bench; usage supplements this requirement with similar claims for individual cantons and even for partisan groups. As in the case of Federal Councilors, the judges of the Federal Tribunal are re-elected as long as they wish to serve. This practice, guaranteeing virtually permanent tenure, largely removes the danger to judicial independence which might otherwise inhere in the brevity of the judges' legal term and in the influences which affect their original election.

The Tribunal's Jurisdiction. Although the Federal Tribunal is often described as the supreme court of the Swiss nation, its powers hardly entitle it to such a designation. Most of the ordinary criminal and civil law of the land, which is incorporated in federal codes, is administered by the courts of the 25 cantons and half-cantons. Over these courts, the Federal Tribunal has only a limited right of review, civil cases involving a relatively large sum being appealable to it, under certain circumstances, from the highest court of the respective cantons. The remainder of the Tribunal's jurisdiction is original in character and rather specialized. It involves cases of civil, criminal, constitutional, and

[1] *Ibid.* (1937), p. 313.

[2] For the Swiss civil service see the excellent monograph by C. J. Friedrich and T. Cole, *Responsible Bureaucracy* (Cambridge, Mass., 1932).

administrative law. Its original civil jurisdiction extends to controversies of a proprietary character between the Confederation and the cantons, between cantons, and between individuals and the Confederation or the cantons. Its criminal jurisdiction is limited to cases involving treason or insurrection against the Confederation, violence against federal officials, offences against the law of nations, and criminal charges preferred by superior federal officials against their subordinates. To hear its criminal cases, the Tribunal holds assizes from time to time in five different centers of the country. In these assizes a section of the Tribunal sits with a jury of 12 men chosen by lot from the vicinage; and the concurrence of five-sixths of the jurymen is necessary to convict an accused person. The Tribunal's constitutional jurisdiction relates to jurisdictional conflicts between cantonal and federal authorities, inter-cantonal public-law conflicts, and cases of alleged violation by the cantons of personal rights secured under the federal or cantonal constitutions, inter-cantonal agreements or treaties. Finally as a court of administrative law, the Federal Tribunal has, since 1925, been invested with the power to settle disputes regarding the legal competence of public officials.

Lacks Powers of a Constitutional Court. As stated elsewhere, the Swiss Federal Tribunal has no power to ascertain the constitutionality of federal statutes, the Federal Assembly having reserved to itself or to the people the final interpretation of the Confederation's basic statute. The Tribunal's power of constitutional review is thus limited to those cases, described above, where it is called upon to vindicate the rights of citizens under cantonal or federal constitutions against alleged violations by cantonal statutes. It might be added that in view of the Tribunal's limited and unsystematic jurisdiction, it could hardly serve as an effective instrument for reviewing federal legislation judicially, even if such a power inhered in it.

Direct Popular Government

Introduction of Direct Democracy. As already remarked in this chapter, a distinctive characteristic of Swiss democracy is the extensive use made of the popular referendum and initiative. The popular referendum is essentially an instrument which permits the electorate to veto or approve acts of representative assemblies. The initiative, on the other hand, involves the actual proposal of a law or similar measure by a portion of the electorate; this may be subsequently approved or rejected by a repre-

sentative assembly but, in any case, is usually submitted to a referendum decision of the entire electorate. In the Swiss federal regime the referendum was made compulsory in 1848 for all proposed changes in the federal Constitution; [1] and thus introduced, the provision was continued in the constitutional revision of 1874. In that revision, moreover, the referendum was extended on an optional basis to all the principal laws and resolutions of the Federal Assembly and in 1921 the referendum was further extended, on the same basis, to international treaties concluded for an indefinite period or for more than 15 years. The popular initiative was likewise introduced into the federal regime by the Constitution of 1848, that instrument providing that the electorate might initiate proposals for a complete revision of the Constitution. In 1891 this initiative was broadened to include popular initiation of proposals for constitutional amendments. The Confederation thus provides at present for (1) a popular compulsory referendum on all constitutional changes; (2) a popular initiative for proposing constitutional revisions and amendments; and (3) a popular optional referendum on laws and treaties.

Operation of the Constitutional Referendum. The compulsory constitutional referendum applies to such amendments or total revisions of the Constitution as may be proposed by the Federal Assembly. To be approved in a referendum, an amendment must be supported by a majority of the participating electorate of the entire Confederation and by a majority of the cantons. In determining the will of the cantons, each canton is held to possess one vote and each half-canton, a half of a vote. The vote of the canton or half-canton is then cast, pro or con, in a referendum, in accordance with the decision expressed on the proposed amendment by the popular majority within the canton or half-canton. For a complete revision of the Constitution, the procedure is exactly the same as in the case of an amendment, provided the two houses of the Assembly have agreed in proposing the draft of the revised Constitution. If only one house wishes to revise and the other opposes, the procedure becomes more complicated. In such a case a popular referendum must first be held to determine whether revision shall be proceeded with. In this referendum, only the popular, and not the cantonal, vote is recorded. If the referendum is favorable, the members of both houses of the Assembly are considered to have been automati-

[1] Provisions for a compulsory referendum on constitutional changes had also been incorporated in the Constitution of the Helvetic Republic of 1798.

cally re-elected and they are forthwith obligated to submit the draft of a revised Constitution to a referendum of the people and the cantons.

The Constitutional Initiative. The constitutional initiative has simply been engrafted upon the compulsory constitutional referendum. The complete revision of the Constitution, or specific amendments thereto, may be proposed in petitions bearing at least 50,000 voters' signatures. If a complete revision is proposed, the subsequent procedure is identical to that followed when one house of the Assembly proposes a complete revision and the other house opposes. If the popular petition proposes merely to amend the Constitution, the procedure pursued thereafter is dependent upon whether the proposed amendment has been formulated in specific, or merely general, terms. If formulated in specific terms, and if the Assembly approves of it, the proposal is at once submitted for popular and cantonal action in the usual manner. If the Assembly disapproves of the proposed specifically formulated amendment, that body may submit its own counter-proposal for popular and cantonal action along with the proposal which has been popularly initiated. When the popular initiative has merely formulated the proposed amendment in general terms, the Assembly again has two courses of action open to it. If it approves of the policy of the initiative proposal, it must draft an amendment expressing the sense of the initiative proposal and submit it to the people and the cantons for action. On the other hand, if it disapproves of the policy of the popular proposal, it must seek a decision in a popular referendum, in which the cantons, as such, have no voice, on the question as to whether or not the initiative proposal shall be proceeded with. If the popular verdict is favorable, the Assembly must then draft an amendment expressing the sense of the initiative proposal and submit that to a regular referendum of the people and the cantons.

Optional Referendum on Laws and Treaties. Unlike the compulsory referendum on constitutional changes, which requires both a popular and a cantonal vote, the optional referendum on laws and treaties requires only a popular vote, a majority of the voters participating being sufficient to decide the issue. The optional referendum may be inaugurated either by 30,000 voters or by eight cantons. Laws or resolutions which are not general in character or which are of an emergency nature cannot be submitted to a referendum. The Assembly is the judge as to

what laws or resolutions may be thus excepted; and it has often been charged with using this discretion to prevent popular action upon its measures.[1] It might be added that the tendency to transfer legislative discretion to the executive also operates to hamper the use of the optional referendum.

Experience with Direct Democracy. Since 1874 the people of the Confederation have attended some 119 plebiscites. Of these, 38 were compulsory constitutional referenda; 45 were optional referenda on laws (including one international treaty in 1923); 31 were constitutional initiatives; and 5 were proposals offered by the Federal Assembly as substitutes for popular initiative proposals.[2] Affirmative popular majorities have been secured most often in the case of the obligatory constitutional referenda, the record being 31 acceptances and seven rejections or an acceptance ratio of more than four to one. Apparently the cantonal majorities have coincided in all cases with the popular. In the case of the optional referendum on laws, approximately two laws have been rejected for each one accepted by the voters, a total of 29 of the Federal Assembly's measures having been invalidated by the people and only 16 sustained. The least popular favor has been shown in the case of the constitutional initiative, there having been three rejections for every initiative proposal accepted by the voters and the cantons, or a total of 24 rejections and seven acceptances. The Assembly's substitutes for initiative proposals to amend the Constitution were accepted by the voters and the cantons on four of the five occasions when such substitutes were submitted. Altogether the people have accepted proposed laws or amendments on 58 occasions and refused to accept them on 61 occasions.

The popular initiative was resorted to much less frequently in the 26-year period from 1891 to 1918 than in the 20-year period from 1918 to 1938. In the earlier period, 10 popular initiatives were proposed whereas after 1918 the number of proposals rose to 24, this figure including four counter-initiative proposals offered by the Assembly. Despite this increased activity, the people have been even more averse to accepting an initiative since the World War than they were before. Among the more

[1] See on this subject remarks of Dr. Zellweger in the publication of the Association Juridique Internationale, entitled *Régression des principes de liberté* (Paris, 1938), p. 74.

[2] The statistics on the Swiss popular plebiscites have been secured from the *Statistisches Jahrbuch der Schweiz* (1933), pp. 394 ff. and (1937), pp. 410 ff.

revolutionary initiatives of the post-1918 period which were decisively rejected was one for a capital levy in 1922, a socialistically inspired "crisis initiative" in 1935 and a proposal to revise the entire Constitution offered in the same year. Resort was had to the optional referendum on laws on only six occasions between 1912 and 1930, all of these occurring after 1920. In the four-year period between 1931 and 1935, however, there were six consecutive optional referenda on laws in five of which the Assembly's measure was rejected. Several of the measures rejected had proposed new fiscal and other burdens which the Assembly had enacted to combat the internal economic crisis. This revival of the optional referendum and the casualties it has inflicted upon the nation's legislative output may explain in part the Federal Assembly's present tendency to designate an increasing number of its statutes as emergency measures and thereby prevent a referendum upon them. It may also explain the initiative proposal brought forward in February, 1938, to amend the Constitution so as to restrict the use of the optional referendum.[1]

Direct Democracy Today. These recent developments with the optional referendum may indicate that the Swiss are not quite as partial to the instruments of direct democracy as they once were. On the other hand, if some of the citizenry question the soundness of these instruments, certainly the vast majority are still convinced that they ought not to be tampered with. The initiative proposal to amend the optional referendum, just referred to, was decisively beaten in every canton; in one canton, Geneva, the majority opposing any change approximated 97 per cent of all those voting. Moreover a glance at the record of this experiment with direct democracy must convince any dispassionate observer that there is little cause for apprehension as to the capacity of the people to discharge their sovereign responsibility. That record now embraces more than three-quarters of a century. It is a record of sustained electoral interest, of discriminating popular judgment, and of cautious, perhaps occasionally over-cautious, decision. It is, by and large, a record of which Switzerland can be justly proud; and for the exponent of the democratic faith it is at once the most daring and the most successful application of that faith that any sovereign nation has ever made.

[1] For an excellent recent discussion of direct democracy in Switzerland see W. E. Rappard, *The Government of Switzerland* (New York, 1936), pp. 66 ff.

The Cantons

Present Significance of the Cantons. As already indicated, the Swiss cantons are no longer the essentially sovereign states which they were prior to 1848. Moreover the present trend towards the nationalization of political power and political loyalty has undoubtedly reduced their historic individuality. Nevertheless they continue to be highly developed autonomous political communities within the federal State. Each of them still has powers which, in many respects, resemble those of a sovereign government. Each of them, moreover, has a complete governmental apparatus, including a written constitution, legislative, executive, and judicial organs, a fiscal system and a civil service. In addition the cantons control all forms of local self-government. Since the autonomous functions of the cantons and their functional relationship to the federal government have been commented upon elsewhere,[1] it remains for us to describe briefly certain aspects of their political structure.

The Landsgemeinde Cantons. The federal Constitution requires that the political system of each canton shall be republican in form; but this republicanism may be either of a purely democratic or of a representative type. One canton, that of Glarus, and the four half-cantons into which Appenzell and Unterwalden are divided, still center political authority in their medieval *Landsgemeinde* or annual assembly of all the citizens. In formal constitutional theory, at least, these bodies exercise the legislative power of the canton and elect and supervise the cantonal executive and administrative officials. Hence Glarus and the four half-cantons using the *Landsgemeinde* must be regarded as possessing a government of a purely democratic-republican type.

Representative Cantons. In all other cantons or half-cantons a representative republican form of government prevails. In these, legislative power and the surveillance of the administration is intrusted to unicameral representative assemblies known as Great Councils or Cantonal Councils. These are elected on the basis of a democratically enfranchised citizenry and proportional representation. The cantons which are not pure democracies have, however, modified their representative character with a large measure of direct democracy introduced by means of the modern initiative and referendum. Every one of them is required by the federal Constitution to submit all changes in the cantonal con-

[1] See p. 986.

stitution to the people and to allow the people to propose constitutional amendments. Hence every representative canton has a constitutional initiative and a compulsory constitutional referendum. In addition each representative canton provides for a popular initiative on ordinary legislation and for a legislative referendum. In some the legislative referendum is optional; in the majority it is compulsory for all laws of a general character and for certain fiscal measures. The representative Swiss cantons thus have a far greater admixture of pure democracy in their institutions than the government of the Confederation; and between some of them and the so-called *Landsgemeinde* cantons there is scarcely any difference in the amount of actual responsibility for law-making placed directly upon the populace.

Cantonal Executives. In harmony with the pluralistic Swiss tradition, the executive power in all the cantons is vested in a commission. Variously known as the Governing Council, or the Small Council, or the Council of State, the commissions consist of from 5 to 11 members, all of whom are popularly elected. Various political parties are usually represented and sometimes efforts are deliberately made to give the parties proportional representation. As in the Federal Council, each member of a cantonal executive commission is the head of an administrative department of the government. Collectively the commission is responsible to the legislature for whose will it must exhibit the same formal deference that the Federal Council exhibits for the will of the Federal Assembly. But, like the Federal Council, the cantonal commissions assume the responsibility for drafting and introducing most of the legislation; this, in addition to their administrative duties, insures them substantial powers of leadership.

Cantonal Courts. Courts of minor degree in the cantonal judicial organization include those of the justice of the peace whose jurisdiction is limited to civil cases and whose chief duty is to settle petty disputes by conciliation or arbitration. The justice of the peace may also constitute a formal court of law and transfer cases to superior tribunals. Criminal cases are tried in the first instance by special magistrates' courts set up in various cantonal districts. Intermediate courts of justice are known as Cantonal District courts. They exercise both appellate and original jurisdiction in important civil cases and appropriate sections sit as courts of criminal appeal. Each canton also has a high court which, in addition to other duties of an administrative nature

involving supervision over the lower courts, serves as the supreme appellate court. In view of the peculiarities of the federal separation of powers in Switzerland, the cantonal courts often exercise jurisdiction over cases which might properly be considered to belong to the federal jurisdiction. All except the petty tribunals have plural magistracies, and judges are uniformly elected either by the people directly or by the cantonal legislatures. The legal term is relatively short; but judges are almost always re-elected. Juries of from 6 to 12 members exist in some of the special criminal courts.[1]

The Communes. For purposes of local self-government the cantons are divided into communes. Of these there are at present some 3118. A few are comparatively large cities; a few more are large towns; but the great majority are rural areas. The governmental structure of the commune is not dissimilar to that of the canton, democracy being its guiding principle. Many of the smaller communes vest communal affairs in an assembly of the citizens; others, having representative organs, have adopted the democratic device of the referendum. Communal powers are extensive and allow for many activities of a socialized character. The relative importance of the communal governments is indicated by their tax receipts which in 1937 nearly equalled the receipts of the cantons and were about half of the receipts of the federal government.[2] A peculiarity of Swiss local government is to be discovered in the fact that there are two separate communal organizations operating over the same local area. The first of these is the regular communal organization which provides the political government and exercises control over all persons actually resident within the local area. This is the communal government already described. The second communal organization is a special one reserved for those persons resident within the communal area, who are also natives of that area, and for all other persons, wheresoever they may be, who were born in that area and claim it as their place of origin. Only these share in the support of this special communal organization and receive its benefits, the latter assuming chiefly the form of financial assistance for indigent members.

[1] For a good description of the cantonal judicial system at the end of the nineteenth century, see Vincent, *op. cit.*, pp. 139 ff.

[2] *Statistisches Jahrbuch der Schweiz* (1937), p. 360.

CHAPTER II. THE PARTIES AND PUBLIC POLICY

Evolution of Swiss Parties

Reliance upon Political Parties. Switzerland follows other democratic states in relying upon a variety of political parties to organize and promote national opinion, to sponsor such opinion in the various organs of government, and to provide those group disciplines and loyalties essential to the successful operation of deliberative and plebiscitary political institutions. As in most other states the political parties are organized spontaneously and find little if any recognition in official documents. About the only recognition formally accorded parties in Switzerland is that discovered in the rules governing the organization and procedure of federal and cantonal parliaments and in the federal and cantonal proportional electoral laws.

Liberal-Radical Ascendancy. In 1848, when the modern Confederation was formed, federal affairs were dominated by two groups of politicians whose principal support came from the Protestant German cantons and from Protestant French cantons. These groups subsequently became known respectively as the Liberal Democrats or, more briefly, the Liberals and the Independent Democrats or Radicals.[1] Of these two groups the Liberals were the older. They advocated a liberal political philosophy of the traditional type embracing the *laissez faire* economics of the Manchester School, moral and cultural freedom, and republican political institutions. The younger and more progressive Radicals were inclined towards a liberalism of a more advanced type, which sought to extend political democracy by means of such instruments as the initiative and referendum, and which was willing to temper economic liberty with a certain degree of state intervention. Despite the differences in their views, these two groups had none the less collaborated in bringing into being the new federal Constitution; and their respective philosophies

[1] Throughout the remainder of the text these parties will be referred to as Liberals and Radicals.

had been chiefly responsible for that document's centralistic, liberal, secular, and democratic features. Opposed to them was a party consisting mainly of those elements which had formed the *Sonderbund* in 1846 and brought on the War of Secession in 1848. Known as the Catholic Conservative People's Party, it represented Catholic Switzerland, was anti-liberal, clerical, and even ultramontane in its views, and emphasized cantonal rights. It paid only grudging allegiance to the constitutional settlement of 1848 into the acceptance of which it had been virtually coerced.

Decline of the Liberals. With the Catholic Conservatives in opposition, the Liberal and Radical parties governed the country from 1848 to 1890. Between them they controlled a large majority in the Federal Assembly and, of course, monopolized all seven places on the Federal Council. During this period of joint ascendancy, the Liberal Party's electoral strength gradually ebbed whereas that of the Radicals increased enormously. In time the Radicals became not only the dominant party in the coalition but by far the largest party in the country; and the Liberals approached the status of a minor political group. The change in their respective strengths was not accurately reflected in the Federal Council because of the practice, already commented upon, of re-electing the members of that body as long as they wished to serve; but as Liberal Councilors retired, their places were invariably taken by Radicals, and towards the end of 1890 the Federal Council's membership came to include only a single Liberal member.

The Radical-Conservative Coalition. When this member retired during the following year, a profoundly important political shift took place; for the Federal Assembly proceeded to elect in his stead a representative of the Catholic Conservative Party. Thus 43 years after the inauguration of the federal Constitution, this party finally gave up the role of official opposition and assumed the responsibility of Government. The coalition between Radicals and Conservatives, begun under these circumstances, has continued. In 1919 a second Conservative was added; and in 1929 the coalition was broadened to include a representative of the Farmers Party which had broken away from the Radicals in 1918. In the meantime the Liberals, although again represented in the Government for a brief period after 1917, have definitely become one of Switzerland's minor parties, albeit an influential one. At present, therefore, the federal Government is in the hands of four Radicals, two Catholic Conservatives, and one member of

the Farmers Party, who together may be said to represent the dominant middle-class elements of the nation.

Rise of Socialism. The role of chief opposition in the Swiss legislature has today been assumed by the Swiss Social Democratic Party. Its first representatives, six in number, appeared in the National Council in 1891 at just the time the coalition between Conservatives and Radicals was first elaborated. That these two events should have transpired at approximately the same time is probably no mere coincidence. Swiss Socialism arose in sympathy with similar movements elsewhere inspired by Karl Marx's materialistic interpretation of history and his doctrine of the class struggle. The onset of industrialization and the growth of such manufacturing centers as Zürich, Winterthur, and Basel, so noteworthy a feature of recent Swiss history, offered fertile ground for the propagation of Socialist doctrines; and the party grew apace. At the end of the World War it claimed 41 seats in the National Council. In the elections of 1935 it secured 50 seats and temporarily wrested from the Radicals the reputation of being the nation's largest party. A group of Left-wing radicals, the so-called Nicole dissidents, broke away from the party in 1939 and, in the ensuing elections, the party's total fell back to 45 seats or 5 less than the Radicals secured in the same elections. The Swiss Social Democrats did not develop tendencies socially as radical or politically as militant as those of Socialist parties in certain other countries. This fact is to be ascribed partly to the Swiss factory worker's retention of much of the social outlook of the peasant and artisan classes from which he had but recently sprung, and partly to the neo-Socialist policies pursued by the Radical and other parties after 1890. The moderate tendencies of the Swiss Socialists were chiefly responsible for their continuing loyalty to the Second and Labor International after the World War and for the relatively small number of Left-wingers who, in 1922, seceded to form the Swiss section of the Third or Communist International.

Establishment of Other Parties. Socialism's parliamentary fortunes were greatly aided by the advent of proportional representation in national elections in 1918. This reform may also be held at least partly responsible for the subsequent development of various other parties. Attention has already been directed to one of these, the so-called Farmers Party, which split off from the Radicals in 1918 largely because of dissatisfaction with Radical agrarian policies. In 1929, when it joined the governing coali-

tion, this party claimed 31 seats in the National Council. Subsequent elections, and particularly those of 1935, have indicated a decided falling-off in its electoral strength. This may be due to the formation of still another agrarian party, known as the Young Farmers, who first entered the lists in 1935 and secured the election of 4 National Councilors. Other minor parties, at present represented in the National Council, include a so-called Independent Party, newly formed in 1935, with 9 seats, and the Independent Social Democratic Party (the Nicole group) with 4 seats. The Communist Party with 2 seats after the 1935 elections lost even these in the elections of 1939.[1]

The Parties at the Present Time

Policies of Catholic Conservatism. Two generations of governmental responsibility and collaboration with other parties have largely dissipated the Catholic Conservative Party's early antipathy to federalism and to a central government within the Confederation. Nevertheless it is still strongly pro-cantonal and

[1] The standing of the parties in the National Council from 1919 to the present time is indicated by the following table:*

	Number of seats				*Per cent of total*			
Party	*1919*	*1931*	*1935*	*1939*	*1919*	*1931*	*1935*	*1939*
Radicals	58	52	48	50	30.7	27.8	25.7	26.7
Liberals	9	6	7	6	4.8	3.2	3.7	3.2
Conservatives	41	44	42	44	21.7	23.5	22.5	23.5
Farmers	31	30	21	21	16.4	16.0	11.2	11.2
Young Farmers	—	—	4	6	—	—	2.1	3.2
Social Democrats	41	49	50	45	21.7	26.2	26.7	24.1
Independent Social Democrats	—	—	—	4	—	—	—	2.2
Communists	—	2	2	—	—	1.1	1.1	—
Independents	—	—	7	9	—	—	3.8	4.8
Others	9	4	6	2	4.7	2.2	3.2	1.1
Totals	189	187	187	187	100.0	100.0	100.0	100.0

The standing of the parties in the Council of States as of Jan. 1, 1939 was as follows:*

Party	*Number of seats*	*Per cent of total*
Radicals	15	34.1
Liberals	2	4.6
Conservatives	18	40.9
Farmers	3	6.8
Social Democrats	3	6.8
Others	3	6.8
Totals	44	100.0

* The table for the National Council was compiled from the *Statistisches Jahrbuch der Schweiz* (1937), p. 406 and from figures relating to the elections of October, 1939, furnished by the Consulate General of Switzerland, 444 Madison Avenue, New York City; the table for the Council of States was compiled from statistics derived from the *Political Handbook of the World*, published by the Council on Foreign Relations, edited by W. H. Mallory (New York, 1939), pp. 183–184.

particularistic in its approach to national issues: it is still the Swiss "states' rights" party. Although it is willing to admit that a degree of political intervention is warranted by the conditions of modern society, its pronouncements repeatedly include warnings against the dangers of a centralized bureaucracy. As antidotes for the growing dominance of politics in modern life, it demands special protection for the family and private property and the encouragement of private philanthropy and co-operative institutions. In this connection it also emphasizes its peculiar concern for the welfare of the Catholic Church, suggesting that the preservation of the Church's prerogatives and authority is the best safeguard for social peace and discipline. In general it may be said that the Catholic Conservative Party favors a corporative conception of society as opposed to a conception of State dominance or political totalitarianism.

Recent papal encyclicals and the party's affiliation with clerically dominated labor unions have encouraged it to take a fairly generous attitude towards labor. It recognizes the "dignity" of labor, and labor's right to a living wage. It justifies labor's unionization so long as this does not involve coercion of independent workmen; and it recognizes the specific need for advanced industrial and welfare legislation. But it is the middle class of society in which the party is chiefly interested. Its ideal commonwealth appears to be one in which peasants, artisans, and petty businessmen dominate; and to protect the interests of such groups it favors setting curbs to competitive individualism and large-scale capitalism. On the whole the party's aims are not too well articulated.[1]

Present Radical Program. The Radical Party continues to be the chief sponsor of federal centralization, the present trend in that direction meeting with its entire approval. Nevertheless the party is somewhat more cautious on this issue of centralization than it used to be. Its public pronouncements warn against the violation of cantonal integrity; and when a new power is added to the jurisdiction of the Confederation, the Radicals are usually ready to share its administration with the cantons and to subsidize the cantons from the federal treasury for the fiscal responsibilities they thereby incur. Although largely forsaken by its former working class supporters, who have gone over to Socialism, the

[1] An official statement of the program of this and other Swiss parties is to be found in Section I of W. E. Rappard and others, *Source Book on European Governments* (New York, 1937), pp. 76 ff. Summaries of their programs also appear in the *Political Handbook of the World*, previously cited, pp. 183-184.

Radical Party continues to be a vigorous champion of social welfare legislation. Nor has it lost faith in secularism, in constitutionally guaranteed personal liberties, or in political democracy. Its continued belief in the latter is evidenced by the inclusion in several of its recent platforms of a plank demanding the popular initiative for ordinary legislation. Liberal capitalism is still regarded as the essential ingredient of the Radical's economic philosophy; but the foundations of that philosophy have been imperiled by the party's advocacy of tariff protection, by its espousal of a variety of federal monopolies, and particularly by the protective legislation which it has sponsored for farmers and business men since the advent of the economic depression in 1930. As in the past the Radicals are in the van of those who seek increased centralization and efficiency for the nation's armed forces and increased protection for its frontiers. With warring nations again entirely surrounding Switzerland this policy has been eminently justified by events. Up to the present the Radicals have also given loyal support to a foreign policy which has sought to reconcile collaboration with the League of Nations with Switzerland's traditional neutrality.

Program of Farmers Party. The third member of the governing coalition, the Farmers Party, is inclined to be somewhat more conservative in its political views than the bulk of the Radical Party to which its members once adhered. It is intensely patriotic and vigorously champions measures for an adequate national defense. It is also disposed to favor a greater degree of federal centralization. With a constituency almost exclusively agrarian (96 per cent) it necessarily entertains decided views on the need for advancing the agricultural interest by means of federal subventions, mortgage-relief legislation, and government price-fixing for agricultural commodities. Recent legislation has favored this party greatly, many of its aims having been secured in the constitutional amendment of March, 1929, which authorizes a governmental grain monopoly and federal encouragement for native grain production.[1] As indicated earlier, popular support for the Farmers Party fell off sharply in the elections of 1935 and it has not since improved its position.

Socialism since the World War. As the second largest political unit in the National Council and virtually the sole governmental opposition, the Social Democratic Party has a position of considerable importance in present-day Switzerland. The impact

[1] For more details concerning this amendment see p. 1019.

of the World War and the recent economic crisis upon the Swiss economic system has encouraged the party to elaborate a far-reaching plan for a controlled economy. The plan is a mixture of outright Socialism and modified capitalism. Among other things it calls for the nationalization of all monopolistic industries and of credit and banking facilities, the release of agriculture from debt, legally fixed minimum wages, wage adjustment boards, work creation schemes for the relief of unemployment, and the extension of all forms of social insurance. In the so-called "crisis initiative" of June 2, 1935, this plan was put to a vote of the Swiss people; the results, however, were disappointing to the party, 5 out of every 6 voters and 18 of the 22 cantons having registered their opposition.[1] The advent of Fascism in other countries has considerably influenced Socialist tactics. Talk of revolution and proletarian dictatorship has given way to paeans of praise of the nation's democratic and free institutions and to discussion as to how those institutions may be preserved. Danger of external aggression from contending belligerent powers has, moreover, caused most of the Socialists to give up their quondam opposition to the army; and although they still warn the country periodically of the dangers of militarism, they now give grudging support to military credits. In view of Socialism's contemporary influence among the voters, the time may well come when the party will have to give up the luxury of opposition and, like its counterparts in France, Belgium, and the Scandinavian states, assume its share of the responsibility of government.

Geographical Distribution of Partisan Supporters. In view of the centrifugal influences of language, religion, and cantonal loyalty, the constituencies of the major Swiss parties are surprisingly well distributed geographically. This is especially true of the Radical and Catholic Conservative parties, each of which has supporters in nearly every canton. In the elections of 1931 the most loyal Radical cantons appear to have been French-speaking Vaud, Italian-speaking Ticino, the German cantons of Solothurn, Glarus, and Luzern, and the German half-canton of Appenzell Exterior Rhodes. The Radical Party was somewhat less well supported in St. Gallen, Rural Basel, Schwyz, Zug, Zürich, Bern, and Thurgau. In the same election the Catholic Conservatives led

[1] The actual vote as reported in the *Statistisches Jahrbuch der Schweiz* (1936), p. 402, was as follows:

For the initiative	142,183
Against the initiative	567,425

in the cantons of Fribourg, Valais, Uri, Unterwalden, and the half-canton of Appenzell Interior Rhodes. They received slightly more support than the Radicals in Luzern, Schwyz, Zug, and St. Gallen, somewhat less support than the Radicals in the Ticino, and polled an appreciable vote in the Grisons. In reviewing the geographical distribution of the constituencies of these two great parties it would seem that some of the so-called Catholic cantons are often only slightly less favorably disposed towards Radicalism than they are towards Catholic Conservatism.

The other parties have a geographically more restricted following. Socialism is most powerful in Neuchâtel, Zürich, Aargau, and Geneva, although it also claims about a third of the vote in Bern, Appenzell Exterior Rhodes, and Urban Basel, and has recently made gains in such areas as Rural Basel, Schaffhausen, the Ticino, and the Grisons. An interesting fact about the Social Democratic vote is that 56 per cent of it is rural and only 44 per cent urban. The Farmers Party's great stronghold is Bern; it is also supported in Zürich, Thurgau, Aargau, Schaffhausen, Vaud, and Fribourg. Geneva, Vaud, Neuchâtel, and Urban Basel are still important Liberal centers; while Urban Basel, the city of Zürich, and the canton of Schaffhausen provide the limited support that Communism has hitherto enjoyed in Switzerland.[1]

Local Party Organization. Switzerland's federal traditions, the absorption of her voters in local politics, and the absence of any such truly national electoral contests as are quadrennially required in America to elect a President, have all tended to give the country's partisan organization a highly localized cast. With the exception of the Social Democrats who, as elsewhere, have developed a considerable amount of partisan machinery on a centralized basis and have a national dues-paying organization,[2] the great parties of the Confederation are little more than loosely organized federations of autonomous cantonal parties with similar political tendencies. It is these cantonal parties which provide most of the funds and draft the list of candidates for the quadrennial National Council elections. Often these local parties do not even bear the name of the national party with which they are affiliated. Thus the local affiliate of the national Catholic Conservative Party is known in Zürich as the Christian Social Party, in Uri as the Conservative Party, in Solothurn as the Solothurn Peoples Party, and in the Grisons as the Conservative-Democratic

[1] The statistics upon which this discussion is based are taken from the *Statistische Quellenwerke der Schweiz* (*Heft* 23), pp. 39 ff.

[2] Cf. H. F. Gosnell, *Why Europe Votes* (Chicago, 1930), p. 136.

Party. Likewise the local affiliate of the Radical Party is known in Zürich as the Radical-Democratic Party, in Unterwalden as the Progressive Peoples Party, and in the Ticino as the Liberal-Radical Party.[1]

National Organization. Such national organization as exists is of comparatively recent growth. At present all the national parties represented in the National Council and Council of States have an annual party diet and a permanent central committee consisting of members chosen by the party diet or by the affiliated cantonal parties or by both the diet and the cantonal parties. The party diet reviews at its sessions the actions of the Federal Assembly and federal administrative officials and discusses at length the proposals which are likely to come before ensuing sessions of the Federal Assembly. Except again in the case of the Social Democrats, such resolutions as are drafted in the party diets are not considered to be binding upon the party's legislative representatives but designed for their instruction and guidance. Proceedings of the diets are democratic in character and usually afford the rank and file ample opportunity for debate. From time to time each of the national parties issues a statement of principles for the guidance of its leaders and for propaganda among the voters.[2] Essentially partisan newspapers, some of which have a national clientele, also exist. Among the major Radical journals are the *Neue Zürcher Zeitung* and the *Nationalzeitung* of Basel. *Vaterland* of Luzern and *Liberté* of Fribourg are leading organs of the Catholic Conservatives, while the important *Journal de Genève* and the *Basler Nachrichten* represent Liberal opinion. The principal organ of the Farmers Party is the *Neue Berner Zeitung*. Social Democracy raises its journalistic voice in such papers as the *Basler Arbeiterzeitung* and the *Berner Tagwacht*. Even Communism has an official organ in the *Freiheit* of Basel.[3]

Public Policy—The State and Economic Enterprise

The review of the history and programs of the various political parties which has just been completed has given some indication of the past and present trends of national opinion. On the other hand it has afforded but an imperfect conception of the

[1] *Statistische Quellenwerke der Schweiz* (cited), p. 38.

[2] A still pertinent description of Swiss party methods and organization may be found in R. C. Brooks, *Government and Politics of Switzerland* (Yonkers, 1918), pp. 305-310.

[3] See *Political Handbook of the World*, previously cited, pp. 184-185.

various public policies to which the Confederation has committed itself. The remainder of this chapter will accordingly be devoted to a description of some aspects of the Swiss government's legislative and administrative activity in the fields of economic enterprise, social welfare, public finance, and foreign relations.

Expansion of Federal Economic Authority. Fear of centralized power and liberal economic doctrines were responsible for the limited nature of the Confederation's original authority over economic affairs. As already noted, however,[1] after 1880 this authority was gradually enlarged by successive constitutional amendments. Thus in 1887 the government at Bern was given control of patent legislation; again in 1897 it was authorized to enact pure food laws; and in 1908 it was given jurisdiction over the nation's water-power resources. Following the World War other constitutional amendments extended federal jurisdiction over civil aviation, water and surface transport, and over the arms traffic.

Gunpowder and Alcohol Monopolies. This augmented national economic power has in many cases assumed the form of governmental monopolies or quasi-monopolies. A precedent for such ventures had been established even prior to 1874 by the investiture in the Confederation of proprietary powers over the manufacture and sale of gunpowder. The primary purpose of this monopoly was to insure an adequate supply of powder for national defense, although sale to private consumers has regularly yielded a small profit to the national exchequer. To this monopoly there was added in 1885 a similar authority over the manufacture and sale of various distilled liquors and industrial alcohol. Broadened in 1930 so as to include all forms of distilled and rectified spirits, and the right to tax certain special liqueurs which were still reserved for private manufacture, the alcohol monopoly gives the Confederation complete control over the importation, manufacture, and wholesale trade in products of a high alcoholic content. The principal aims of the monopoly when first formed were to combat the evils of alcoholism and intemperance and to improve the quality of distilled liquors used for beverage purposes. From the very beginning, however, the revenue derived from the monopoly proved to be a most important consideration. The Confederation was at first required to turn all profits over to the cantons, which were permitted to use all but one-tenth of them for ordinary budgetary expenses. The reserved 10 per cent

[1] See p. 986.

had to be applied by them to measures for the promotion of temperance. When, however, the monopoly was reorganized after 1930, one-half of the total profits were allocated to the Confederation. The average income from the alcohol monopoly is about six million francs.[1]

Communications. Another, more orthodox, proprietary enterprise of the Confederation, subsequently developed, is that relating to the postal and communications systems. The monopoly now includes telegraphs, telephones, and the radio broadcasting industry. Telegraph, telephone, and radio were each taken over for development by the government at the time they originated as new inventions. Investment in these enterprises today totals approximately 650 million francs; and the employed personnel, including officials and ordinary employees, numbers more than 32,000. The postal administration has been a regular source of gain since 1923; since that year the communications system has also shown a regular profit. Postal profits in 1937 were estimated at 15 million francs and telephone and telegraph profits at 10 million francs.[2]

Bank Note Monopoly and National Bank. According to a constitutional amendment adopted in 1891, the federal government was given still another monopoly. This was the privilege of issuing bank notes, a privilege theretofore reserved to cantonal and private banks. For the purpose of exercising this monopoly the Confederation was authorized to establish a central bank of issue and to control its operations. The first attempt to establish such a bank met with a popular rebuff in a referendum conducted in 1897, the opposition coming chiefly from cantonal and private banks. Not until 1906 did the Confederation succeed in bringing about the desired legislation; and the Swiss National Bank opened its doors at its main offices in Bern and Zürich in 1907. Two-fifths of the stock of this bank may be owned by the cantons and at least one-fifth by private banks. Annual dividends are limited to four per cent of the capital stock, profits above the dividend and surplus accounts being distributed to the cantons and federal government according to a two to one ratio. Since its establishment the Bank has been a pronounced success.

[1] For a description of the alcohol monopoly, see J. and V. J. Steiger and C. Higy, *Finanzhaushalt der Schweiz* (Bern, 1934), pp. 76-80, 420.

[2] *Statistisches Jahrbuch der Schweiz* (1937), pp. 175, 180. For the early history of the federal telephone enterprise see A. N. Holcombe, *Public Ownership of Telephones on the Continent of Europe* (Cambridge, Mass., 1911), chaps. xii-xiv; for recent activity of the entire postal and communications monopoly see J. and V. J. Steiger and Higy, *op. cit.*, pp. 49 ff.

It has not only provided Switzerland with a uniform and elastic currency but has stabilized the national money market, handled international payments, and provided a convenient instrument for conducting the fiscal operations of the federal government.[1]

The Federal Railways. The most important of all the economic enterprises over which the Confederation has come to exercise proprietary rights is the railway system. The Swiss railways were made subject to federal purchase following a popular referendum held on February 20, 1898; and between 1902 and 1909 nationalization of five main lines in the system was carried into effect. Various motives prompted this action. Among them were: (1) the extension and improvement of railway service in parts of the country where topographical conditions made private extension impossible or at least unprofitable; (2) the reduction of capital cost through the use of public credit; (3) the improvement of railway labor conditions; (4) cheapening of service to shippers; and (5) the removal of the influence of foreign stockholders who, in the case of some of the individual lines, were in a majority. The purchase of the railway system, its extension since 1910, and the electrification of most of the lines represent at once the federal government's greatest physical asset and its greatest financial burden. The total debt which had been incurred for the railways up to 1937 was over three billion francs. This exceeded the remaining public debt of the Confederation by about 300 millions. The loans which the government made at the time the system was purchased were to be extinguished within 60 years; this period of amortization was extended in 1920 to 100 years. Deficits which were regularly incurred between 1914 and 1922 have reappeared since 1930 as a result of economic depression and competition with other modes of conveyance; nevertheless interest and amortization charges have been paid regularly. Administration of the roads is largely autonomous. Subject to the authority of the Federal Assembly and Council, supervisory powers are vested in a Federal Council of Administration consisting of 15 members chosen by the Federal Council to represent various economic interests. Responsibility for operations rests with a general directorate of three persons at Bern and in three sectional directorates at Lausanne, Luzern, and Zürich.[2]

[1] For a brief account of the bank see J. and V. J. Steiger and Higy, *op. cit.*, p. 27.

[2] Cf. A. N. Holcombe, "First Decade of Swiss Federal Railways," *Quar. Jour. Econ.*, XXVI (Feb. 1912), 352. For recent changes see Z. Giacometti, "Die Fortbildung des oeffentlichen Rechts der schweizerischen Eidgenossenschaft," *Jahrb. des oeffentl. Rechts*, XVI (1928), 373; see also J. and V. J. Steiger and Higy, *op. cit.*, pp. 86 ff.

Agricultural Intervention. Not unlike these various proprietary economic powers is the authority over the nation's agricultural activity which a constitutional amendment confided to the Confederation in March, 1929. According to the terms of this amendment, the Confederation is to develop a permanent policy for aiding grain farmers, furnishing them with seeds adapted to Swiss soil and climate, and either granting such subventions or fixing such prices for grain as to make its production a profitable enterprise under adverse conditions. In order to protect its price-fixing prerogative the government may monopolize the right to import flour and grain.[1] The purport of this new federal power is that Switzerland has embarked upon a nationalistic agricultural policy similar to that which other European states have recently adopted. The cost of this policy to the taxpayer and consumer will probably be higher in Switzerland than elsewhere because so much of her soil is but poorly adapted to the production of cereals. One of the objectives of the policy is to stimulate a back-to-the-land movement, thereby fostering the political power of the peasant proprietors and checking that of the urban working class. The principal aim, however, is to prevent a recurrence of such conditions as obtained during the World War when, completely isolated from the rest of the world by the belligerents, Switzerland found great difficulty in importing enough grain to feed her people.[2]

Crisis Intervention. The increased power of the Confederation over economic activity has not resulted solely from formal constitutional amendments. Much of it is to be attributed to the various periods of emergency to which Swiss economy has been subjected during the past quarter of a century. Two of these periods were brought on by general European wars, those which began in 1914 and in 1939. On each occasion the requirements of maintaining Swiss neutrality and of defending an economic system disrupted by the stoppage of international trade led the Confederation to impose rigid controls over production and consumption. The experience of the World War period demonstrated that a federal war-time economy, although professedly temporary, cannot be entirely liquidated once the emergency has passed. The persisting influence of such an economy was manifested in the continuance of direct war-time taxation by the Confederation and by the renewal in peace time of federal subsidies

[1] For the amendment on the grain monopoly see Constitution, art. 23.

[2] Cf. W. E. Rappard, *L'Individu et l'état dans l'évolution constitutionnelle de la Suisse* (Zürich, 1936), pp. 497-498.

to certain private activities for which the war-time period had established precedents. War-time economy also accustomed the Swiss people to federal control over agricultural pursuits and thus helped to lay the psychological foundations for the constitutional amendment of 1929, described in the preceding paragraph, which placed this control on a permanent basis. But it was the economic crisis of the years after 1930 which invited federal economic intervention on an unprecedented scale and virtually transformed the historic relations of the federal government and private entrepreneurship. As a direct result of this crisis the Confederation erected rigid controls over foreign exchange, banking, and currency, which are not likely soon to be relaxed. The Confederation was also called upon to extend its aid in the form of loans and subsidies to private enterprise in industry, commerce, and agriculture. Principal beneficiaries of the federal largess have been the dairy and hotel industries, local transportation companies, live-stock breeders, watch-makers, embroidery manufacturers, and particularly the mortgaged farmer. The Swiss federal government is thus evolving the same sort of public partnership with private business that has become typical in so many Western states in recent years.[1]

Public Welfare

Labor Legislation. The interventionist activity of the federal government has also assumed a social form and a great deal of welfare legislation is now contained in federal Constitution and statutes. Power to regulate child labor, to limit the hours of labor of adults, and to insure protection of workmen engaged in dangerous occupations had already been granted the Confederation in the revised Constitution of 1874; and with the concurrence of the people the Federal Assembly enacted a general factory act in 1877. Still broader powers over the field of labor, including such matters as industrial relations and the regulation of unemployment, were authorized by a constitutional amendment in 1908. The original factory act was accordingly revised in 1914 and again in 1920. The net result is a labor code as advanced as any on the Continent.

Other Welfare Activities. Other fields of social action have claimed the Confederation's attention. Subsidies for primary edu-

[1] For some statistics of this intervention see J. and V. J. Steiger and Higy, *op. cit.*, pp. 194-195.

cation were first made to the cantons in 1903 following a constitutional amendment authorizing such subsidies in 1902. These federal primary school subsidies were considerably augmented in 1930; and special assistance was extended to the educational system of the Grisons and the Ticino. For more than 50 years the Confederation has also been making financial grants to encourage arts and handicrafts and to improve agricultural methods. Sums appropriated for these purposes totaled some 24 million francs in 1932. Steps have also been taken to combat epidemic and dangerous diseases through the agency of the federal government, constitutional authority for this purpose having been broadened by an amendment adopted in 1913. Measures to combat tuberculosis have been particularly far-reaching, a law passed in 1928 having offered federal aid up to 50 per cent of the cost incurred by cantons, communes, and private institutions in fighting this disease. Mention might also be made in this connection of the effort to encourage temperance, implicit in the alcohol monopoly, and of the effort to abolish organized gambling undertaken after the passage of a constitutional amendment in 1920.

Insurance against Illness and Accident. Social insurance first became an object of national concern in 1890 when the federal Constitution was amended to authorize federal accident and sickness insurance. The first plan for such insurance elaborated by the Federal Assembly was, however, rejected by the people in 1900 chiefly because it did not safeguard the interests of private and co-operative insurance societies. Twelve more years elapsed before a second plan passed safely over the hurdle of the referendum. This plan provides quite different regulations for the two kinds of insurance. Practically all the voluntary sickness insurance societies have been allowed to continue with federal subventions. In addition cantons and communes are encouraged to establish compulsory sickness insurance institutes which also receive federal aid. Despite the decentralized administration and largely voluntary character of this federally regulated sickness-insurance system, it has been quite effective. In 1937 there were approximately 1150 cantonal and private sickness-insurance institutions in operation; and the number of persons insured in them amounted to more than one-seventh of the entire Swiss population. Accident insurance was organized as a federal monopoly, its administration being vested in a newly created Federal Accident Insurance Institute at Luzern. Such insurance

was also made compulsory for all employees in State monopolies and for the employees in all private establishments with a sizable payroll. Premiums are paid to the Institute by the employee and the employer according to a one to three ratio, their respective contributions being generously supplemented by the federal exchequer.[1]

Social Security. After the World War efforts were made to extend the public insurance system so as to embrace widows, orphans, the aged, and the incapacitated among the beneficiaries. A constitutional amendment with this object in view was elaborated by the Federal Council in July, 1924, and, with certain changes interposed by the Federal Assembly, was accepted by the people and the cantons on December 6, 1925. According to this amendment the government must first provide a pension system of a voluntary or compulsory nature for widows, orphans, and the aged; subsequently it must make similar provisions for incapacitated persons. From its tobacco and liquor monopoly revenues, which are especially earmarked for the purpose, the Confederation is to contribute not more than one-half of the cost of the pension plan; and for the plan's administration the cantons, communes, and private annuity companies are to be enlisted.[2] A specific pension proposal was subsequently elaborated by the Federal Assembly; but owing to the economic depression and its attendant fiscal uncertainties, the proposal was rejected at the polls in December, 1931.[3] In the meantime, however, special federal funds continue to be legally earmarked for this type of insurance.

Unemployment Relief. Systematic federal legislation to provide unemployment insurance has as yet made no appreciable headway. The unemployment problem, already serious in the decade after the World War, became even more so after 1930, and in 1936 it is estimated that about 90,000 persons were seeking regular employment. Principal responsibility for unemployment relief is assumed by the communes, which are usually aided by subventions from the cantonal treasuries. Federal activity in this province is limited to occasional financial grants. These, begun in 1918, have recently assumed substantial proportions.[4]

[1] Summaries of this plan for social insurance are given in L. K. Frankel and M. M. Dawson, *Workingman's Insurance in Europe* (New York, 1910), pp. 73 ff. and 214 ff.; for statistics on the operation of the plan see *Statistisches Jahrbuch der Schweiz* (1937), pp. 250-251.

[2] Giacometti, *op. cit.*, p. 339.

[3] Cf. Rappard, *op. cit.*, p. 500.

[4] See J. and V. J. Steiger and Higy, *op. cit.*, pp. 193, 222.

Swiss Neutrality and Foreign Policy

Origins of Neutrality. Just as federalism and democracy are the principal tenets of Switzerland's policy for maintaining internal security, so neutrality is the essence of her policy for maintaining her external security. This faith in neutrality may be said to date from 1515 when, after a century of war and conquest during which the soldiers of the Confederation acquired the name of being the best in Europe, the Swiss were defeated by France at Marignano in Lombardy. Thereafter, although many of the rulers of Europe continued to hire Swiss troops for mercenary service, the Confederation itself generally pursued the policy of remaining behind its own frontiers and of refusing to participate in recurrent coalitions and wars. During the next three centuries this policy of diplomatic abstention and neutrality became a characteristic of Swiss foreign policy. Indeed it became so much of a tradition that even Napoleon paid lip service to it in his Act of Mediation, the Constitution which he drafted in 1803 for a Switzerland which, at the time, was completely at his mercy.

Neutrality a Recognized Policy. In 1815 the powers concluded that a neutral Switzerland would serve the purposes of the broad European settlement which they were attempting to effect in the wake of Napoleon. Consequently on November 20th of that year, the representatives of France, Great Britain, Prussia, Russia, Austria, Sweden, Spain, and Portugal formally affixed their signatures to a document which declared that the maintenance of the inviolability and independence of the Confederation was necessary to the peace and stability of Europe. The document also pledged the signatories to respect and maintain the integrity of the Confederation. Switzerland's own obligation to protect her neutrality has found expression in various clauses of her major public documents since 1815. The present Constitution declares that it shall be the duty of the Federal Assembly to take measures "to protect the nation's independence and neutrality" and the duty of the Federal Council to watch over "the maintenance of independence and neutrality." Another article has formally invalidated the "capitulations" or agreements by which various cantons once furnished mercenary contingents for foreign governments. Still another article of the Constitution prohibited all except a few federal officials from receiving foreign pensions, titles, decorations, and similar distinctions. As amended

in 1931 this article now interdicts all foreign pensions and distinctions in the case of federal officials and extends the prohibition to cantonal officials as well. Finally, as we shall see, the Constitution and the laws have been frequently changed in order that a substantial military force might be developed for the protection of the nation's frontiers.

Neutrality Tested by Experience. More than a century has elapsed since Swiss neutrality became part of the international law of Europe and of the formal constitutional law of the Confederation. During that period the policy has been subjected to several tests. The first of these tests came during the Franco-Sardinian War against Austria in 1859, the second during the Franco-Prussian War of 1870, and the third during the World War of 1914-1918. Of these three tests, by far the most serious was that of the World War. For the first nine months of that conflict two-thirds of Switzerland's frontiers bordered on those of belligerent powers and for the remaining 42 months warring powers hemmed her in completely. At the outset of the conflict Switzerland reminded all the belligerents of their commitment to respect and maintain her neutrality. Thereupon she took energetic steps to safeguard herself. The famous *Vollmacht* resolution, granting the Federal Council emergency authority of a sweeping character, was passed by the Assembly in August, 1914, total mobilization of her armed forces was decreed and Swiss troops maintained a constant vigil on the frontiers until peace was restored. The outbreak of hostilities between Nazi Germany and the Franco-British alliance in September, 1939, has once again subjected Switzerland's traditional policy to the acid test of a European war. As in 1914 the Swiss Government has reminded each of the contending great powers and adjacent Italy as well of the international obligation to preserve the Confederation's neutrality. Once more the Federal Assembly has granted emergency defensive powers to the Federal Council, mobilized its armed forces and stationed troops at the frontier. Although an invasion of Switzerland by one of the contending belligerents was freely predicted during the opening months of the current conflict, thus far there have been only technical violations of Swiss territory by belligerent aircraft.

Neutrality and League Membership. Following the international settlement of 1919 came the question of Switzerland's attitude towards the newly established League of Nations. An organization consisting of most of the nations of the earth, dedi-

cated to peace and founded upon Swiss soil could not properly be ignored. On the other hand there was the fear that membership in such a body might jeopardize the nation's policy of neutrality, more sacrosanct at the time than ever before. This fear was occasioned in part by the fact that the League did not at the time of its organization include the defeated powers and by the implication of the League's Covenant that member States might, on occasion, be called upon to take disciplinary, and even military, action against recalcitrant members. After lengthy negotiations, the Swiss Federal Council was able to secure from the Council of the League of Nations an understanding that if Switzerland joined she would never be asked to participate in military sanctions against other members or to permit the passage of League troops across her territory. The Swiss Federal Assembly and Council felt that such an understanding reconciled Switzerland's international neutrality with its potential League duties; accordingly in May, 1920, they submitted the question of adhesion to the League to the people and the cantons in a constitutional referendum. In this referendum the popular majority was overwhelmingly favorable, almost 100,000 more affirmative than negative votes having been cast; the vote of the cantons, however, was barely favorable, 11½ cantons having favored the referendum and 10½ having opposed. On the basis of this electoral decision, therefore, Switzerland became a member of the League in the summer of 1920, the only member with a "neutralized" status.[1]

Since joining the League, Switzerland's collaboration, although loyal enough, has been tinged with caution and reserve. In 1935, she took advantage of her neutral status to justify her refusal to help police the Saar Basin on the occasion of the international plebiscite in that area. She also fell back upon her neutral status in explaining the limited support she gave the League's policy of sanctions against Italy in 1935. The course of European politics since 1933, culminating as it has in Europe's second general war of the twentieth century, has moreover raised the question whether Switzerland can continue to reconcile even her special status in the League with her neutralized position. This question is all the more acute because Germany is no longer a League member. At the outbreak of the current war there was considerable discussion of the possibility of removing the League's

[1] Cf. W. E. Rappard, *L'entrée de la Suisse dans la Société des Nations* (Geneva, 1924).

headquarters from Geneva; and arrangements were apparently made to take most of the administrative staff of the organization to Vichy, France. For the time being this plan has been held in abeyance. Meanwhile, however, the Swiss authorities are exercising a virtual censorship over many of the erstwhile activities of the League, and there is apparently an understanding between Swiss authorities and the Geneva organization that the latter will not discuss the political issues of the contemporary European conflict or compromise Swiss neutrality in any way. In brief Switzerland appears willing to continue to tolerate the central organization of the League on her soil as long as the League remains politically innocuous.

Faith in Neutrality Unshaken. Should the Swiss ever conclude that League membership or any other international commitment is incompatible with their neutrality, there is little question as to which they would give up. Neutrality as a policy now has back of it almost 400 years of tradition. The Swiss people are convinced that it was neutrality that saved them from the ravages of the wars of 1870 and of 1914 and they still have faith that it will save them from invasion and belligerency in the present conflict. Moreover Swiss politicians realize only too clearly that when contiguous great powers resort to war, neutrality alone preserves internal peace among the nation's three major linguistic groups. Since these normally tend to sympathize with the belligerent aspirations of their respective co-linguists among the contending powers, only the most rigid official impartiality can prevent internal discord and the possible break-up of the Confederation.

Other Diplomatic Activity. Relations with the League have by no means absorbed all of Switzerland's diplomatic activity since the World War. This has also embraced numerous commercial accords with other States, many of them of vital importance to Switzerland because of the dependence of her economy upon international trade. Treaties of arbitration have also been concluded of which at least four, those with France, Italy, Finland, and Greece, require that arbitration or judicial process shall be resorted to for the solution of any dispute which may arise. Relations with other States have, on the whole, been amicable throughout the period under consideration except in one case, that of Soviet Russia. From 1917 to the present, Switzerland and the Soviet have refused to accept each other's diplomatic representatives; and the long-drawn-out hostility between the

diminutive middle class republic and the great proletarian dictatorship have afforded one of the less serious, and even diverting, aspects of current European discord.

Franco-Swiss Relations. A difficulty, now happily concluded, also arose between France and Switzerland in 1923. It related to the French customs frontier in Upper Savoy. This area had been a free zone for Swiss goods for more than a century, a condition resulting from the decisions of the Vienna Congress in 1815. When Savoy passed from Sardinia to France in 1859, the Emperor Napoleon III agreed to recognize Swiss rights in the area and the French customs frontier was established at some distance south of the political frontier between France and Switzerland at Lake Geneva. In 1919, however, France succeeded in incorporating into the Treaty of Versailles a clause stating that, with Switzerland's concurrence, she might move her customs frontier in Savoy up to the political frontier on Lake Geneva. A treaty was subsequently signed by France and Switzerland in which the latter, for various considerations, agreed to the abolition of her free zone privileges in Upper Savoy; but on February 18, 1923, in the first and only popular referendum on a treaty ever held in Switzerland or, for that matter, in Europe, the Swiss people overwhelmingly defeated the agreement with France. Two days before the referendum was held, France, on her own initiative, moved her customs frontier to the Lake and thus precipitated an international issue. Subsequently the Swiss, with the somewhat reluctant agreement of the French, submitted the whole case to the Permanent Court of International Justice at The Hague; and a decision of this tribunal on the main issue in 1929, and on certain supplementary questions in 1932, upheld the Swiss right to the maintenance of the Savoyard free zone. France accordingly moved her customs boundary back to the original position.

Zollverein with Liechtenstein. Another development in Switzerland's international position after 1919, was the formation of a commercial union with the Principality of Liechtenstein. Prior to the World War this tiny country had been included in the Austrian postal and customs administration. With the break-up of the dual monarchy, Liechtenstein petitioned for a similar arrangement with Switzerland. In a convention concluded on November 10, 1920, Switzerland agreed to extend its legislation over the principality's postal, telephonic, and telegraphic systems and to commit their administration to the appropriate Swiss authorities. By a treaty with Liechtenstein on March 29,

1923, Switzerland also agreed to take over the principality's customs administration and to extend her own customs frontier to include Liechtenstein's boundaries.

National Defense

Unusual Features of the Army. For the defense of their neutrality the Swiss rely not merely upon the pledges of other States but also upon their own army and auxiliary air service. The Swiss army differs quite remarkably from the prevailing Continental military systems. To be sure, like all her neighbors, Switzerland has adopted universal and compulsory military service. Except for those exempted for reasons of physical or mental incapacity who, incidentally, are required to pay a military exemption tax,[1] every Swiss citizen must begin his initial period of army service during his nineteenth year. This initial period, however, is not the two- or even one-year interval normally required of other Continental military recruits. The Swiss infantry recruit is called to the colors for a period of approximately three months, during which he is thoroughly grounded in military essentials. At the end of this period he is considered a full-fledged member of the army's first-line troops, known as the *Auszug* or *Élite,* and resumes his civilian activities. Recruits in other branches of the service have similar training periods, ranging from 60 days for the medical and supply corps to 102 days for the cavalry. During the next 12 years the infantry recruit is called to the colors annually for 13-day periods to repeat the courses of instruction he received as a recruit and to supplement that instruction. From the end of his thirty-second year until his forty-first, the Swiss soldier is enrolled in the *Landwehr* or first reserve and from his forty-first year until his forty-eighth, in the *Landsturm* or second reserve. During these 16 years the time actually spent with the colors in periods of peace is about two weeks. Altogether, therefore, the formal training of the Swiss soldier throughout his active affiliation with the army rarely exceeds seven or eight months. It must be added that both before and during his military career, the Swiss infantryman's formal training is usually supplemented by practice in drill and marksmanship in the various volunteer rifle clubs which dot the land and receive active support from the public authorities. Recently annual practice in musketry under the jurisdiction of a

[1] For further details on this tax see p. 1031.

rifle club has been made compulsory for all first-line and *Landwehr* troops.

Still another unusual feature of the Swiss military system is the absence of a permanent professional military staff. No person can be appointed to the rank of commander-in-chief except in time of national emergency when the Federal Assembly has decreed general mobilization; the appointment, moreover, lapses as soon as the emergency has passed. A commander-in-chief has been appointed on four different occasions since 1848. The most recent appointment is that of Colonel Henri Guisan, who took charge of the forces which the Confederation mobilized at the outbreak of the European War in September, 1939. The only military officials in the permanent service of the federal government are those engaged in staff work in the Military department of the Federal Council and those officers and non-commissioned officers who instruct army recruits. Of these there are at present about 300. The regular commissioned and non-commisioned officers of the army are recruited from the ranks and, like the private soldiers, are called upon only intermittently to serve with the colors after their initial period of training and study; at other times they are engaged in ordinary civilian pursuits.

Dual Political Control. A third distinctive feature of the Swiss army system is the dual character of the political authority which has jurisdiction over it. Although the current of constitutional reform since 1874 has run strongly in the direction of centralizing military jurisdiction in the government of the Confederation, the cantonal governments still exercise many military prerogatives. Within their respective territories they enforce most of the federal military regulations, keep the military registers, call the troops to the colors, and provide them with their personal equipment. They also form the principal infantry units and appoint their non-commissioned and commissioned officers, the latter up to the rank of captain. Military powers are exercised by the cantonal authorities under the supervision and with the approval of the federal Military department; and for at least a portion of the expenditure they incur, the cantons are reimbursed by the federal government.

New Defense Measures. The Swiss military system provides an organized and disciplined force of approximately 425,000 first- and second-line troops subject to mobilization during periods of national emergency. It is a system well adapted to the

nation's democratic and federalistic political institutions; and despite the strictures of certain Swiss politicians, there is little evidence that the system inspires the militaristic influence commonly associated with professional armies. Whether this system can provide Switzerland with an adequate defense organization at a time like the present is another question. With neighboring belligerent great powers but poorly concealing irredentist and imperial ambitions which could quite logically include Switzerland, and with offensive military weapons developed to such a point that not even Switzerland's peculiar topography any longer affords a serious obstacle to invasion, this question has become a very grave one. The Swiss themselves appear to be pondering it at length and to have concluded that their defense needs strengthening. At any rate the Federal Council, with the concurrence of a popular majority in a referendum held in 1936, has taken steps to increase the period of active training with the army, to supplement military aviation and artillery service, to perfect anti-aircraft defense and defense against gas attacks, and to strengthen every variety of border fortification. Moreover as long as the period of national emergency, decreed at the end of August, 1939, continues, the Swiss army, at least partially mobilized, will maintain a continuous watch on the nation's frontiers.[1]

Swiss Finances

Recent Fiscal History. The policies pursued by the Confederation during the past two generations have effected great changes in its fiscal structure. Indeed merely a glance at the budgetary entries from 1919 to the present and at the mounting figure of the national debt during that same period will indicate that a veritable fiscal revolution has taken place. Budgetary appropriations increased from 126 million francs in 1913 to more than 540 million francs in 1936; revenue, which in 1913 amounted to about 113 million francs, has in the same interval increased to over 500 millions annually. Moreover in only four of the years since 1914, that is from 1928 to 1932, has the annual budget been balanced or been made to show a surplus. Prior to 1914 budgets were invariably balanced. In 1900 the consolidated federal debt amounted to a little over 78 million francs; by 1937 the federal

[1] For Swiss military law and description of Switzerland's army organization as it existed prior to the World War see *Sen. Doc.* 360, 64th Cong., 1st Sess., Washington, 1916, and *Sen. Doc.* 796, 63rd Cong., 3rd Sess., Washington, 1915. For some of the latest developments in the defense system and the army organization see League of Nations *Armaments Yearbook* (Geneva, 1936), pp. 772-806.

debt had reached the stupendous total of more than 6000 million francs.

Character of the Public Debt. An important fact to be borne in mind about this debt is that its principal item is the obligation incurred by the original purchase of the Swiss railways and by their improvement and electrification since the date of purchase. The present consolidated railway debt, as indicated earlier, is now a little more than 3000 million francs, or about one-half of the total Confederation debt. Some of the remainder of the federal debt also represents investments in government monopolies and property that has a capital value. Thus a substantial portion of the total debt structure is covered by capital assets which, under favorable conditions, may be expected to produce revenue. The public debt proper was mainly incurred during the four World War years, when 1500 million francs were added to pay for the cost of mobilization, frontier protection, and the maintenance of the nation's food supply. A further large increment—some 700 million francs—was added during the three years from 1933 to 1936 to finance measures of rearmament and to mitigate the effects of economic depression.[1]

Original Revenues of the Confederation. When the revised Constitution of 1874 was adopted, most of the taxing powers were left to the cantons. The only taxing authority allocated to the Confederation was the power to levy import and export duties at the frontier. In addition it was given half the proceeds of the cantonal military exemption tax. This is a capitation and graduated property and income tax levied upon all males who fail to qualify for military service. The Confederation was also expected to use whatever profit it made on its proprietary enterprises, which in 1874 included the powder monopoly and the postal and telegraph systems. Subsequently the telephone system, the bank note monopoly, the alcohol monopoly, and the railways were added to these enterprises; but only the first two of these occasionally produced profits which could be applied to the general expenses of the Confederation. Finally the Constitution provided that if at any time these various means of support proved to be insufficient, the cantons were to make contributions to the federal exchequer in accordance with their wealth and taxable resources. For almost two generations this arrangement appeared to

[1] Most of these statistics have been derived from the *Statistisches Jahrbuch der Schweiz* (1936), p. 355, and from J. and V. J. Steiger and Higy, *op. cit.*, pp. 417-419.

be quite satisfactory. Indeed it worked so well that the Confederation did not find it necessary to call upon the cantons for the special contributions which the Constitution had authorized; instead, beginning about 1890, it began the practice of making federal subventions to the cantons, a practice which, as we have seen, has today assumed huge proportions.

Revision of the Tax Structure. The event which overthrew the fiscal arrangements set up by the Constitution of 1874 was the World War. The huge cost of mobilization and other protective measures taken in 1914 and thereafter soon made new sources of federal revenue imperative. Consequently in June, 1915, the Confederation was authorized by a constitutional amendment to make a levy upon income and property. A year later a war profits tax was added; and a subsequent constitutional amendment also authorized a stamp duty on securities and papers used in legal and commercial transactions. In 1919 the Constitution was again amended to provide for a second "war" tax to be levied upon general property. Although all of these "war" taxes except the stamp duties were deemed to be temporary in nature and were subsequently liquidated, some in 1926 and others in 1932, they nevertheless established useful precedents. When, therefore, the government of the Confederation found itself in 1933 facing another emergency, created this time by economic distress rather than by war, it proceeded to re-enact many of the direct war-time levies and others besides as "crisis" taxes. It did this without benefit of formal constitutional amendment, merely alleging that public necessity and the needs of the budget made unprecedented fiscal measures necessary. These crisis taxes furnish a startling illustration of the degree to which emergency powers and emergency government have been substituted for the normal constitutional regime in contemporary Switzerland. In addition to these new taxes the Confederation secured authority by constitutional amendments enacted since 1920 to tax the manufacture and sale of tobacco and, as we have seen, to reserve half the profits of the alcohol monopoly for its own use. It has also greatly expanded its customs revenue by introducing a thoroughly protectionist level of duties. The financial exigencies of the new crisis which has supervened as a result of another European war will undoubtedly require still sterner measures of taxation. Certainly if Switzerland's fiscal experience during the World War is to be taken as a guide, such a conclusion appears to be entirely warranted.

Present Fiscal Relations of Confederation and Cantons. Hence today the former tax preserves of the cantons appear to have suffered a federal invasion which is likely to become a permanent occupation; and the revenue powers of the Confederation have become so broad that they compare favorably with those of a centralized national government. The cantons, however, find some satisfaction in the new order of things because they participate in the proceeds of many of these new federal taxes. These "participations" amount to 20 per cent in the case of the federal stamp taxes and to as much as 40 per cent in the case of some of the special crisis taxes. In addition the cantons continue to receive half the net profits of the federal alcohol monopoly and half of the military exemption tax. Nor must the annual subventions, or contributions as they are officially designated, paid by the Confederation into the various cantonal treasuries be forgotten. These contributions are now being made for almost every purpose for which the cantons normally make appropriations. In 1913 the total amount of federal contributions was about 25 million francs; in 1932 the amount reached 150 million francs; and in 1937, including extraordinary or crisis contributions and contributions made for projects which are jointly administered by Confederation and cantons, the total exceeded 250 million francs or about one-half of the entire federal budget.[1]

Retrospect and Prospect

Summary of Recent Changes. Not even this sketchy review of governmental practice and public affairs within the Confederation can fail to convey the impression that Switzerland's polity has greatly changed since the beginning of the twentieth century and particularly since the World War. As we have noted, *laissez faire* liberalism has in many instances given way to political collectivism and State intervention; private capitalism has been limited by the growth of federal monopolies and by various forms of crisis intervention; and personal freedom in economic matters has often been sacrificed for publicly guaranteed forms of social or economic security. Moreover the dualistic political relations between Confederation and cantons, once weighted so strongly in favor of the latter, have been modified

[1] A brief history of Swiss federal taxation since 1914 is given in J. and V. J. Steiger and Higy, *op. cit.*, pp. 32 ff. For a description of the present federal tax structure see *Tax Systems of the World*, 7th ed. (Chicago, 1938), p. 337. The estimates of federal contributions to the cantons are taken from J. and V. J. Steiger and Higy, *op. cit.*, p. 422, and from *Statistiches Jahrbuch der Schweiz* (1937), p. 355.

again and again in the direction of national centralization; and the cantons, although still regarded as autonomous federal entities, have become in increasing measure the subsidized administrative organs of the federal government.

Dangers to Liberal Democracy. Some observers are of the opinion that during the course of this transformation Switzerland's traditional democracy and her free political institutions have not escaped damage. As evidence of such damage they point to the large amounts of legislative discretion which have been transferred to the Federal Council, to the growing rule-making power and virtual judicial authority which is being exercised by this body and by some of its subordinate departments, and to the decline of legislative criticism of administrative activity. They affect to believe that certain recent executive ordinances have violated the constitutional principle of the separation of powers and trenched gravely upon traditional popular liberties. Most blameworthy among such ordinances in their opinion are those issued since 1933 to prohibit the wearing of political uniforms, to curb the rights of the press and to regulate the prices of certain commodities. These critics also regard the recent suppression of the Communist Party by two of the cantons and the vindication of their action by the Federal Tribunal as an invasion of the constitutional right of association. Much apprehension is likewise being felt by Swiss democrats over the tendency of the Federal Assembly to use the urgency clause in the constitutional provisions governing popular referenda so as to prevent the submission of laws to the people. Finally there are many who see threats to the future of constitutional government in the extra-constitutional emergency authority which the Federal Assembly and Council have been exercising since 1930.[1]

These Dangers Evaluated. Some of these developments undoubtedly find no warrant in the Republic's best constitutional traditions; they are hold-overs from the emergency regime which existed in Switzerland during the World War, and they have been given a new lease of life since 1930 because of the critical internal economic situation and the new European conflict. If the Swiss tolerate them at the moment, they do so because they realize that the times are unusual. On the other hand it must be pointed out that in many instances these alleged unconstitutional develop-

1 For some of these criticisms see the comments of Swiss jurists and publicists in the publication of the Association Juridique Internationale entitled *Régression des principes de liberté* (Paris, 1938), pp. 69 ff., 92 ff., 114 ff. See also K. Reber, *Das Notrecht des Staates* (Zürich, 1938), pp. 102-103.

ments are but necessary concomitants of the enlarged province of the Swiss Government. This observation applies especially to the growing power of the executive, which is largely the result of the modern collective State's demand for a more flexible rule-making process than the traditional legislature can offer. To such changes as this, democracy will probably have to accommodate itself in Switzerland as elsewhere.

Reactionary Influences. More overt threats to Swiss democracy and constitutional liberty are to be discerned in the activities of certain anti-democratic and anti-libertarian political movements which have come into being since 1933. Some of these have been patterned upon German Naziism or upon Italian Fascism; others exploit a native brand of reaction. Probably the largest of these movements is the so-called "National Front"; smaller memberships are claimed by the Young Conservatives, New Switzerland, the National League, and the Peasants League. It was these various Fascist and semi-Fascist movements which were chiefly responsible for circulating an initiative petition in 1935 demanding a total revision of the present Swiss Constitution. Apparently it was their hope that if the whole of the basic statute could be thrown open to change, the resulting revision might be made to include some of their corporative, anti-parliamentary institutions and some of their illiberal social conceptions. The initiative petition secured almost 80,000 signatures, or 30,000 more than are legally required for a referendum. Considerable popular favor was manifested for the petition in the cantons of Schaffhausen, St. Gallen, and Fribourg. Rather ominous, moreover, was the fact that two of the established political parties, the Catholic Conservatives and the historic Liberal Party, were willing to support the proposal for total constitutional revision under the auspices of this initiative. The referendum was held on September 8, 1935. Owing chiefly to the resolute opposition of the Radicals, Social Democrats, and the labor unions, the petition was decisively defeated. The affirmative vote was 196,135; the negative, 315,443.[1]

Prospects for the Future. The rebuff thus administered to the initiative proposal and to those chiefly responsible for it seems to indicate that the great majority of the Swiss people are

[1] *Statistisches Jahrbuch der Schweiz* (1936), p. 401. For a discussion of the constitutional revision proposal, see *La Lutte au sujet de la Constitution fédérale,* ed. by L'Union syndicale suisse à Berne. See also F. Fleiner, "Ziele und Wege einer Eidgenössischen Verfassungsrevision," *Wirtschaftliche Publikationen der Züricher Handelskammer* (*Heft* 20, 1934).

content to continue under their present constitutional order. There is, of course, the possibility that this attitude may change as a result of the impact of the current struggle in Europe upon the nation's life. Certainly a revival of war-time economy can only aggravate some of the derangements in the nation's economic system suffered during the recent depression period and ultimately provide new occasions for social discontent among various classes of the population. Moreover, despite her determined neutrality, it is by no means impossible that a small country like Switzerland, connected so intimately by geography and racial ties to the contending belligerents, will escape invasion during the current war or, at its conclusion, be able to withstand pressure from victorious belligerents for changes in her international position or even in her internal order. In short not even the most confirmed optimist can deny that the future holds many potential dangers for Switzerland. On the other hand, if fate be reasonably benign, the stalwart patriotism, good sense, and wise leadership which, over the course of six and one-half centuries have succeeded in welding a congeries of peoples into one of the most admirable polities known to man, are not likely to fail in preserving what they have evolved. At this writing, at least, the probability is that Switzerland will remain a promontory of democracy and free government projecting into a portion of Europe which seems to have forgotten all about such institutions and that she will continue to afford a practical example of the way in which man may redeem himself from the curse of war, social strife, and racial bigotry.

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THE GOVERNMENT AND POLITICS OF BELGIUM AND HOLLAND

BY *R. K. Gooch*

CHAPTER I. THE LOW COUNTRIES

Liberal Parliamentary Democracy

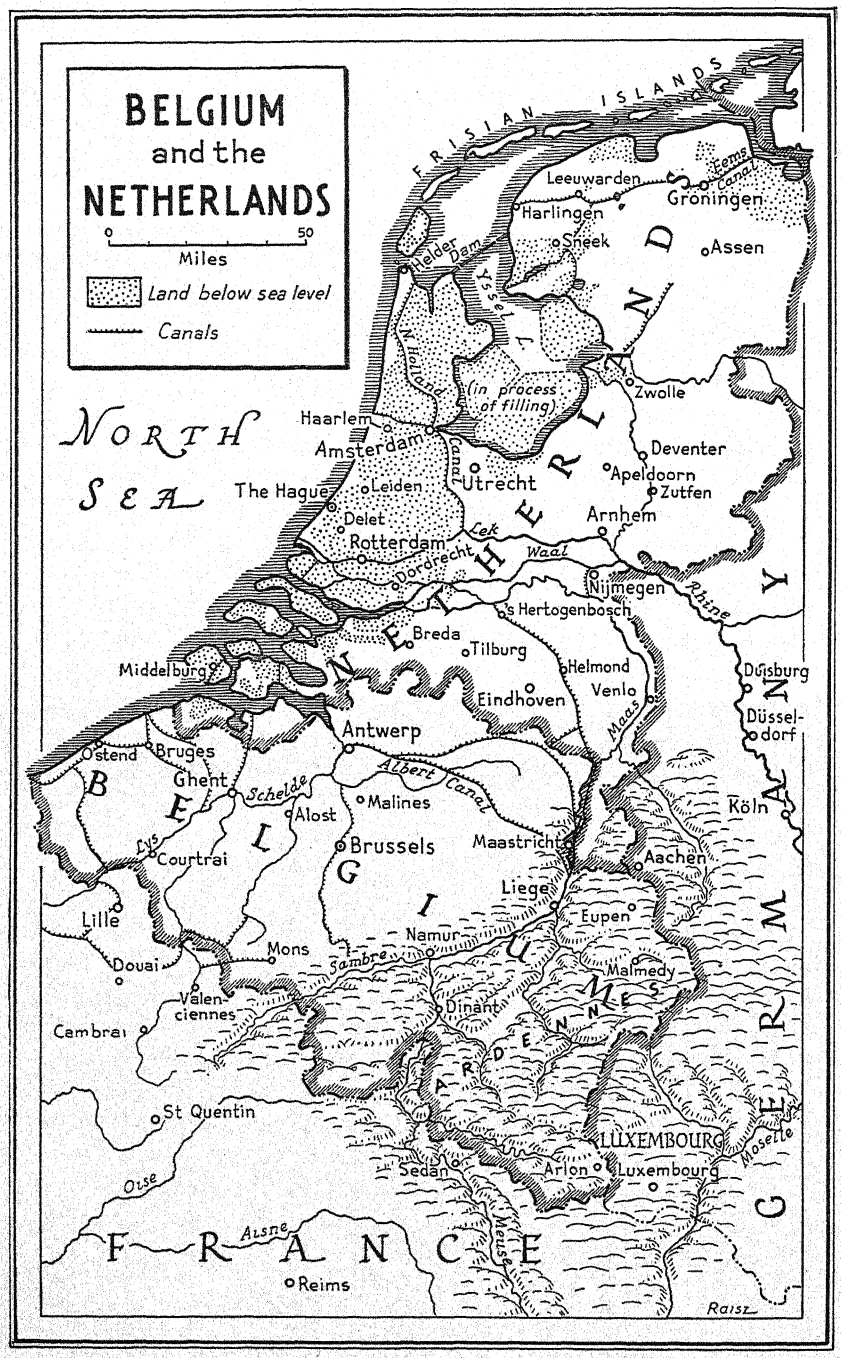
The small countries, Belgium and the Netherlands, are of interest to the student of government primarily because they present on a small scale an example of the orderly working of liberal parliamentary democracy. They display a number of resemblances to the only one of the Great Powers on the Continent of Europe that can be listed as a democracy, the prototype on the Continent of Europe in the matter of parliamentary government,—France. Such of these resemblances as are important furnish evidence of the apparent working in history of fundamental principles that are persistent, stubborn, and possibly eternal.

Areas and Populations

The area of Belgium is just under 12,000 square miles, the area of the Netherlands, exclusive of large water areas, slightly above that figure. For purposes of comparison, it may be noted that the area of Maryland is 12,327 square miles. Belgium has a population of just under, the Netherlands of just over, eight and a half millions. The great density of the population of the Low Countries may thus be reckoned and noted. As a matter of fact the population density of Belgium is greater than that of any other European country; whereas the situation in the United States presents little but contrast, the population of Maryland, for example, being only slightly more than a million and a half. In Belgium, a consideration of the greatest moment consists of the fact that the population is approximately equally divided into Walloons and Flemings, a situation which presents an exceedingly important language problem, the Walloons speaking a French dialect, the Flemings a dialect of Dutch.

Chequered History of the Low Countries

At the opening of the modern epoch, the countries that are at present Belgium and the Netherlands consisted of an aggre-


BELGIUM
and the
NETHERLANDS
0
50
Miles
Land below sea level
Canals
FRISIAN ISLANDS
Leeuwarden
Ems Canal
Groningen
Harlingen
Sneek
Assen
Helder
Dam
Ijssel
Zuider Zee
(in process of filling)
Zwolle
NORTH SEA
Haarlem
Amsterdam
Deventer
Apeldoorn
Zutfen
Utrecht
The Hague
Leiden
Delft
Arnhem
Rotterdam
Lek
Waal
Dordrecht
Nijmegen
Rhine
's Hertogenbosch
NETHERLANDS
Breda
Tilburg
Middelburg
Helmond
Venlo
Eindhoven
Duisburg
Düssel-dorf
Maas
Antwerp
Ostend
Bruges
Ghent
Schelde
Albert Canal
Malines
Alost
Köln
BELGIUM
Brussels
Maastricht
Aachen
Courtrai
Lys
Liege
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Eupen
Namur
Mons
Sambre
Malmedy
Douai
Valen-ciennes
Dinant
Cambrai
ARDENNES
GERMANY
St Quentin
LUXEMBOURG
Mosette
Sedan
Arlon
Luxembourg
Oise
Aisne
Meuse
FRANCE
Reims
Raisz

gate of petty states that had been one after the other brought under the authority of rulers of the House of Burgundy. By 1549, these states had come to be regarded as provinces of a unified commonwealth, the indivisibility of which was in that year proclaimed by Charles V. However, just one hundred years later, the Peace of Westphalia (1648) recognized the division of the union into northern provinces and southern provinces; for, near the turn of the century, revolution had in fact resulted in separation. From this time until the beginning of the nineteenth century, the two sets of provinces experienced a variety of vicissitudes. The provinces of the North managed at the beginning of the seventeenth century to establish an independence that persisted until the time of the French Revolution. Meanwhile, the southern provinces, subject to Spain since the middle of the sixteenth century, passed under the domination of Austria by the Treaty of Utrecht in 1713, there to remain until near the end of the eighteenth century. The period of the French Revolution was highly important in the history of both the future Belgium and the future Netherlands. The Belgian provinces were annexed by France in 1794-1795. At this same time, the northern provinces became occupied by French troops; and, in 1795, they were established as the Batavian Republic under the protectorship of France. The Batavian Republic became in 1806 the Kingdom of Holland, with Napoleon's brother Louis on the throne. In 1810, the northern provinces became a part of the French Empire. Following the downfall of Napoleon, the union of the northern and southern provinces was, under the Prince of Orange, re-established. In August of 1815, a Constitution, which had been drafted by a commission composed of an equal number of members from the northern and southern provinces, was, in spite of rejection by a Belgian assembly, promulgated by King William I. This Constitution, modified in several far reaching respects by subsequent amendments, is the present Constitution of the Netherlands.[1] In 1830, after revolutionary troubles in Brussels, a Provisional Government proclaimed the independence of Belgium and ordered the convening of a National Congress. This Congress, composed of two hundred members elected under a system of restricted suffrage, conducted the government of the country for eight months, in the course of which it formulated and proclaimed a Constitution and at the end of which it with-

[1] An English translation of the text may be found in W. F. Dodd, *Modern Constitutions*, 2 vols. (Chicago and London, 1909), Vol. II, pp. 79 ff.

drew in favor of Prince Leopold of Saxe-Coburg, whom it had chosen as King Leopold I of the Belgians. The Constitution continued for over sixty years without formal change; but, in the last decade of the nineteenth century and during the present century, it has been several times amended.[1]

The Constitutions

The constitutions of Belgium and the Netherlands are relatively long and detailed documents. The former consists of approximately one hundred and forty articles, the latter of nearly two hundred. In both cases, provisions regulate the structure and function of the three branches of government and deal with several related considerations. The method of amendment is the same in the two countries. Legislative enactment declares the necessity for formal change. This has the effect of dissolving the houses of the legislature. After new elections, provisions adopted by two-thirds of the houses must be promulgated as part of the Constitution.

[1] An English translation of the Belgian Constitution may be found *ibid.*, Vol. I, pp. 125 ff., and in McBain and Rogers, *The New Constitutions of Europe* (New York, 1922), pp. 501 ff.

CHAPTER II. THE STRUCTURE AND FUNCTION OF GOVERNMENT

The Central Government

The Executive. The governments of Belgium and of the Netherlands are both monarchical in form. This results from the formal fact that headship of the State is in both instances vested in an institution symbolized, as in England, by the Crown. Of much greater importance, so far as the substance of things is concerned, is the historical fact that the strongly established monarchical tradition in the two countries has been, with the passing of time, modified in practice in the direction of political democracy. The instrumentality through which reconciliation has been effected of the principles of monarchy and democracy, of the principles of unity and diversity, is, of course, the parliamentary system of government.

Parliamentary Monarchies. The survival of monarchy in Belgium and the Netherlands gives to the governmental systems of those countries an initial resemblance to the government of England rather than to the government of France. Furthermore, the Belgian and Dutch parliamentary systems, in spite of the historical relationship of the two countries with France, are, in certain material respects, closer to the English system than to the French. The distinguished Alsatian scholar, Professor Redslob,[1] has spoken of parliamentary government in England as the system in its "authentic" form, distinguishing the French form as "inauthentic." He classifies Belgian parliamentary government, with which the Dutch system may be joined, as "authentic" in character. Whether or not the existence of monarchy in Belgium and the Netherlands and the operation of parliamentary government in those countries more nearly in accord with the rules of the system that were developed in England are connected as cause and effect is not a simple question. In any event, the Belgian and

[1] *Le Régime parlementaire* (Paris, 1924).

Dutch monarchs deserve some consideration in a study of the governments of the two countries.

The Crown. The monarch in Belgium is always a King and the direct heir of a King. This results from a provision of the Constitution stipulating that descent shall be "from male to male, in order of primogeniture, and to the perpetual exclusion of females and of their descendants." On the other hand, the ruling Dutch monarch may be either a King or a Queen. Indeed, as is well known, the present monarch is a Queen; and the next in line of succession is a Princess. Several provisions of the Dutch Constitution regulate descent of the Crown, the rule of primogeniture established by these provisions being in one of them summarized in the stipulation that "the older line shall always have precedence over the younger, the male branch over the female, the older over the younger, and in each branch men shall have the precedence over women and the older ones over younger ones."

In both the Belgian and Dutch constitutions, several provisions regulate such questions as marriage of the monarch and of members of the royal family, default of heirs to the thrône, and a regency required by the minority or other disability of the occupant of the throne. A constitutional provision in each country likewise guarantees to the monarch an annual income, corresponding to the Civil List in England, the amount to be fixed by law. At present, the Belgian Civil List amounts to 12,000,000 francs and the Dutch to 1,200,000 guilders. Legal provisions likewise deal with matters like revenue from royal domains and allowances for palaces. The monarchs also possess personal fortunes.

The constitutional position of the Belgian and Dutch monarchs adheres closely to the traditional model of a Head of State under the parliamentary system of government. This position is in a sense easy to define and, in another sense, considerably less easy. In the first respect, the King—or Queen—may in general be said, in accordance with French terminology, to *possess* but not to *exercise* power.[1] The monarch is a "figurehead" in the sense that specific political decisions made in the name of the Crown must in practice be the decisions of responsible ministers. For this situation the constitutions of the two countries lay the bases; and the rest is the result of the logic of parliamentary government. In both countries, the Constitution recognizes as vested in

[1] Cf. p. 110, *supra.*

the monarch the several powers that have come to be associated with the executive branch of government.[1] Thus, as regards the powers usually considered to be executive in the stricter sense, both constitutions expressly recognize authority to enforce the laws, including authority to make regulations; they confer command of the armed forces; they vest in the monarchs the power of appointment and removal; and they place in their hands the conduct of foreign relations. Then again, the constitutions recognize the monarchs as sharing with the legislature the initiative in legislation; they stipulate, furthermore, that laws require the assent of the monarchs; and they confer upon them the powers of summoning, adjourning, proroguing, and dissolving the legislature. Finally, both constitutions vest in the monarchs the power of pardon. Then, the constitutions arrange that exercise of these wide powers shall be conditioned by the operation of ministerial responsibility. Thus, both constitutions contain the following identical article: "The King is inviolable; the Ministers are responsible." And in both constitutions the familiar device of ministerial countersignature of all royal decisions is provided. On the other hand, the monarchs are something more than formal and ceremonial Heads of State, though this position in itself is far from being without importance. The Crown and its wearer symbolize the unity of the nation and the empire. The royal family is influential in setting the tone for the social and moral life of the country. The monarch, standing above parties, plays a role essential to parliamentary government in its authentic form. So far as personal influence in the political sphere is concerned, there exist, in Bagehot's well-known phrasing, "the right to be consulted, the right to encourage, the right to warn." No little, as is natural, depends on the personality of the King or Queen. In general, it may be said that during the last hundred years and more in Belgium and the Netherlands, the monarchs have acted with marked prudence and discretion and have contributed to institutional stability through an influence that has been throughout wholesome and effective.

Ministers. The responsible Ministers who, in Belgium and the Netherlands as in other countries that practice parliamentary government, constitute collectively the policy-forming executive are, individually, regularly heads of departments. The number of departments and their organization are in principle determined by the Crown, that is to say, in practice by the Prime Minister.

[1] Cf. pp. 111-115, *supra.*

This executive determination is in the French tradition; [1] and the situation differs from that in Great Britain and the United States, where executive organization is regulated primarily by legislation. However, under the Continental arrangement, the legislature has, through the power of the purse, final authority in the matter.

At present, there exist, both in the case of Belgium and of the Netherlands, a Prime Minister and ten other Ministers. The Ministers of the two countries are for the most part identical. In each country, there are Ministers of Foreign Affairs, Colonies, Finance, Justice, Economic Affairs, Defense, and Education and Fine Arts. In the case of the other Ministers, there is general correspondence, though some differences in nomenclature and other details exist. Thus, there are Ministers concerned with internal affairs, with social welfare, and with communication. All Ministers are, in theory, chosen and dismissed by the Crown. In practice, they receive their appointments, in accordance with the established principles of parliamentary government, from the Prime Minister; and they, like him, owe their positions to the fact that they are leaders of the majority in parliament. For a time in the past, homogeneous majorities and ministries were a recognized tradition; but, since the World War, coalition ministries have been regularly employed.

Administrative Organization. Administrative organization in Belgium and the Netherlands is, as has been said, based in principle on French concepts. The power of the Crown, that is to say, the power of the executive, to appoint to administrative positions is conceived to require as a consistent conclusion possession of power by the executive to determine practical matters of administrative structure, personnel, and procedure. Ultimate parliamentary control is conceived to be effected through the granting of appropriations. Moreover, statutory provisions regulate certain general concerns. Thus, for example, constitutional provisions and provisions of legislative enactments effect such a purpose as defining the very power of appointment and removal, or deal with a matter like the citizenship of administrative officials. But most details are regulated by executive decree. In practice, this means that some provisions of a more general character are determined by the Cabinet, and that the larger part are determined by the several Ministers, each for his own department. In the result, a considerable amount of diversity exists in respect

[1] Cf. p. 119, *supra.*

of such matters as recruitment, tenure, promotion, and the like.[1] Thus, a symptomatic illustration is to be seen in the fact that there is no agency corresponding closely to the English and American civil service commissions. On the other hand, some unity has been realized; and the amount appears to be increasing. This has been especially true since the World War. Problems growing out of war-time dislocation, naturally greater in Belgium than in the Netherlands, have demanded solution; and greater co-ordination and uniformity have resulted. In general, despite the tradition for each department to regulate its own affairs, the very fact that similar problems tend to receive similar solutions gives rise to unity. Related to this is the fact that, as in all countries, a tendency exists for that executive department which is concerned with finance to gain a certain priority and to assume a certain amount of direction in matters of governmental personnel. This, as may easily be imagined, is a tendency in the direction of unity. Finally, where the tradition for separate departmental determination gives rise in practice to solutions that fall too far short of what seems reasonable, the executive as a whole may step in with a more general arrangement; and where the tradition for executive determination is too unsatisfactory, the legislature may always take a hand.

As a rule, a Minister serves as head of an executive department. Associated with the Minister is his individual *cabinet,* political in character and composed, as in France,[2] of trusted intimates of the Minister, who serve as a buffer between him and the permanent non-political officials. Of these last-mentioned agents, the head in each department is a Secretary General. Under him serve the various government employees of the department, arranged in necessary subdivisions, the bureaus being the cells, as it were, of which the whole organization is composed. All the subdivisions are naturally headed by such officers, in the form of chiefs, sub-chiefs, and the like, as are required. In the services as a whole, there exist, as in all countries, bureaucratic tendencies; but the merit principle has wide application, and a great part of the work of government is performed by able and faithful public servants.

The Legislature. The national legislature in both Belgium and the Netherlands is bicameral in structure. In Belgium, there are a Senate and a Chamber of Representatives. In the Nether-

1 Cf., for the analogous situation in France, pp. 132-139, *supra.*
2 Cf., for this and related considerations, p. 122, *supra.*

lands, the States-General is composed of an Upper House and a Lower House.

The Belgian Chamber of Representatives, composed of 202 members, and the Lower House in the Netherlands, composed of 100 members, are directly elected for four years by systems of proportional representation. The electorate consists of both men and women, the age limit being 21 in Belgium but 25 in the Netherlands. Voting is secret and, it is interesting to note, compulsory.

The Belgian Senate is composed of 167 members and is elected for four years. In the case of the Upper House in the Netherlands, which consists of 50 members, the term is six years, one-half of the members being chosen every three years. Members of the Upper House in the Netherlands are chosen by councils which exist in the several provinces. The composition of the Belgian Senate is slightly more complicated, the members falling into three classes. In the first place, members to the number of one-half the membership of the Chamber of Representatives are elected according to the same system as prevails in the Chamber. Then, councils in the several provinces [1] choose members in the proportion of one for every 200,000 inhabitants. Finally, members equal in number to one-half the members chosen by the provincial councils are chosen by the Senate itself through proportional representation from several categories of distinguished citizens.

In both Belgium and the Netherlands, annual legislative sessions are stipulated for by constitutional provision; [2] and special sessions may be called by the Crown. In the case of the annual session, the duration must be at least 40 days in Belgium and 20 days in the Netherlands. Both constitutions require that, in case of dissolution, elections shall be held within 40 days and that a meeting shall be convened within two months.

The organization of the legislative assemblies is determined in several respects by constitutional provisions and in most details by rules which the assemblies are authorized to formulate for themselves. The existence of political parties is, of course, a practical consideration of the greatest importance. The Belgian chambers choose their own presiding officers, who, though party nominees, serve as impartial arbiters of procedure. In the Netherlands, the Crown appoints the president of each house, being confined, in the Lower House, to a list of three names presented

[1] Cf. p. 1056, *infra*.
[2] For the importance of such a provision, cf. p. 151 n., *supra*.

by the House. Legislative committees are in all cases extensively employed.

The legislatures in both Belgium and the Netherlands perform the functions regularly associated with legislatures in modern democracies; that is to say, they make laws, they administer public finance, and they control the executive. In Belgium, the two chambers, in spite of a traditional tendency for the Chamber of Representatives to be regarded as having a certain priority, are, from the technical legal point of view, co-ordinate. This is true even in the realm of finance. In the Netherlands, on the other hand, the Lower House is both in law and fact allotted a position superior to that of the Upper House. All legislative proposals, and *a fortiori* financial measures, must be passed first by the Lower House, after which they must in both cases be passed or rejected without amendment by the Upper House.

The Working of Limited Monarchy. The constitutions of both countries stipulate that legislative power shall be exercised jointly by the Crown and the legislature. So far as the Crown is concerned, this stipulation is supplemented by stipulations recognizing that laws may be initiated and must be approved by the Crown. In practice, this, of course, vests authority in the Cabinet. Thus, the ministers are authorized to introduce legislative measures, other constitutional provisions giving them the right to sit and take part in proceedings in both houses.[1] The theoretical veto of the Crown is not exercised in practice. This situation is, as in other countries where the parliamentary system of government prevails, explicable in terms of the simple proposition that the veto is inconsistent with the practical operation of that system. In the case of government measures, exercise of the veto would involve the absurd hypothesis that a Cabinet advised the Crown to veto one of its own measures; and, in the case of measures owing their initiative to one of the houses, the Cabinet possesses the authority, as indeed it has the obligation, to make known its opposition to a proposal, in the course of its passage.

The constitutions of both countries include a few provisions dealing with the budget. These are supplemented with statutory stipulations and provisions of legislative rules. Every year, in good time, the Crown presents to the legislature proposals of expenditure and suggestions concerning ways and means. The budget is studied in committee and debated by the houses in public sittings,

[1] The resemblances to the situation in France in this and related matters are especially striking. Cf. p. 124, *supra*.

both occasions offering opportunity for control of the executive and its policy. When the budget has been passed, its provisions are carried out by various agencies of the executive branch of government. This activity consists, of course, of multitudinous financial transactions. The accounts that must be kept of them are naturally examined; and this scrutiny reintroduces, though after the fact, control of the activities of government. In both Belgium and the Netherlands, constitutional provisions stipulate for examination of the accounts by a Court of Accounts, after which the accounts are submitted to the legislatures for final approval.[1]

The control exercised by the legislatures over the executive is that which is regularly associated with the operation of ministerial responsibility under the parliamentary system of government. The ultimate control is based fundamentally on the power of the purse; the methods through which day by day control is maintained are investigation and criticism. The Ministers are responsible in the specific sense that their policy must be acceptable to the legislature. This means that the Ministers, in the presence of a clear expression of lack of confidence on the part of the legislature, must either resign or appeal to the voters through dissolution. The fact that dissolution is, unlike the prevailing situation in France,[2] regularly practiced constitutes, it may be noted, no small part of the explanation why parliamentary government in Belgium and the Netherlands is to be associated with the English parliamentary system as "authentic," rather than with the French system as "inauthentic." The executive in the first three countries, though under the constant supervision and ultimate control of the legislature, is not in practice subject to the whim of the legislature. The power of dissolution is an important weapon in the hands of the executive; and it undoubtedly does much to prevent abuse of "legislative omnipotence." In the result, a highly desirable ministerial stability is the rule.

The Judiciary. The judicial systems of Belgium and the Netherlands present little that is of importance and interest to the student who has examined with some care the judicial system of France.[3] The resemblances, which are easily explicable on historical grounds, are very striking. The principal difference may also be explained in terms of history. A complete system of administrative courts, which has been developed in France since

[1] Cf., in this respect, p. 165 and p. 192, *supra.*
[2] Cf. p. 113, *supra.*
[3] Cf. pp. 177-202, *supra.*

the time of direct French influence on the Low Countries, does not exist in Belgium and the Netherlands. There are exceptional administrative tribunals such, for example, as the Court of Accounts; but the most typical cases of litigation that involve administrative officials must be heard, if arrangement is made for them at all, in the ordinary courts. So far as the structure of the regular judiciary is concerned, its outline is very similar to that of the French system of ordinary courts. The Constitution, both in Belgium and in the Netherlands, creates the highest court. This tribunal is known as the Court of Cassation in Belgium and as the High Court in the Netherlands. In general, these courts perform the same primary function as the Court of Cassation in France, that is to say, they review decisions on points of law and, if they decide that the law has not been properly applied, quash the decision under review. These highest courts also have a certain amount of supervision over the administration of justice in the courts below them; and, it is interesting to note, they try cases of impeachment. At the basis of the judicial systems are courts that try minor infractions and controversies, presided over by single judges. These courts correspond to the courts of Justices of the Peace in France, the judges in Belgium being called Justices of the Peace. Of such courts, there exist about 100 in Belgium and slightly more than 200 in the Netherlands. The remaining courts in both countries are in general plural in composition, three or five judges being the more usual number. Next above the lowest courts stand in each country about 25 courts that hear appeals from the lowest courts and exercise a wide original jurisdiction, both civil and criminal. They are known as Courts of First Instance in Belgium, and as District Courts in the Netherlands. Between these tribunals and the highest courts are placed Courts of Appeal. There are 3 of these in Belgium and 5 in the Netherlands. In Belgium, the French system of Courts of Assizes has been established for the trial of cases involving serious crimes, the jury being regularly employed in such instances. Trial by jury is not used in the Netherlands.

Judges in Belgium and the Netherlands are appointed for life. They are in principle irremovable, dismissal being possible only through procedure that affords ample safeguards. These independent judges administer justice in the name of the Crown. They all receive their appointments from the Crown. At the same time, in the case of judges of the Court of Cassation, the judges of the Courts of Appeal, and the presiding judges of the Courts of

First Instance in Belgium, and in the case of the judges of the High Court in the Netherlands, the Crown must make appointments from lists furnished to it according to law. Belgian lists are double lists, one being furnished by the court involved and the other by national and local representative assemblies; whereas the list in the Netherlands is furnished by the Lower House of the States-General.

Local Government

As is natural in the circumstances, local government in Belgium and the Netherlands displays striking resemblances to the French system.[1] In all three countries, the institutions of parliamentary government are superposed upon a system of local government or administration that was in all cases established by Napoleon I; and the systems at the base have remained fundamentally imperial in character. All three local systems are similar in respect of areas, agents and organs, and relations of local to central government.

Areas. The principal areas of local government in the Low Countries are, as in France, of two kinds. They are the Provinces, which correspond to the Departments in France, and the Communes. The number of Provinces in Belgium is 9 and in the Netherlands 11. There are something more than 2500 Communes in Belgium and slightly more than 1000 in the Netherlands. As in France, other areas exist for judicial, military, and electoral purposes; but they are not of importance for local government.

Agents and Organs. The primary agency of local government both in Belgium and the Netherlands is a small unicameral representative assembly. Such an agency exists both in the Provinces and the Communes. This assembly is known as a Council, except in Provinces of the Netherlands, where it is known as the Provincial Estates. The size of the assembly varies in general with the population of the area involved. In Belgium, the Provincial Councils vary from 50 to 90. The Provincial Estates in the Netherlands vary from 35 to 82. In both countries, the Commune Councils vary from 7 to 45. The members are in all cases directly elected by the voters in conditions that are in most respects the same as those prevailing in the case of national elections.[2] The regular term of members of the local assemblies is four years. These local assemblies may be regarded as miniature legislatures.

[1] Cf. pp. 203-226, *supra.*
[2] Cf. p. 1052, *supra.*

As such, they regularly hold meetings, and they organize with a view to performing the work that devolves upon them. They perform in general the same functions as national legislatures. Thus, they enact regulations having the force of law; they administer finance through the preparation, discussion, and approval of an annual budget of expenditures and through the imposition of certain local taxes; and they maintain a certain oversight of local executive officials. In all this, there exists, as in France, a certain amount of potential and actual control by higher authorities, provincial agencies having some control over the Communes, and the Crown over the agencies of both kinds of areas. As in France, again, the operation of the control in practice determines the degree of centralization that exists. In general, there is, it may be noted, somewhat less centralization in Belgium and the Netherlands than in France.

Each of the local assemblies in the Low Countries chooses from its membership a few individuals who compose a small body that supervises the affairs of the area concerned during intervals between meetings of the assembly and that, in general, serves as a local executive. In the Provinces, this body consists regularly of six members, being known as the Provincial Deputation in Belgium and as the Deputed States in the Netherlands. In the Communes, there is a Board of Aldermen, varying in size in both countries from two to seven members. Moreover, in all the areas, there is a principal representative of the Crown. In the Provinces, the principal central official is known as the Governor in Belgium and as the Commissioner in the Netherlands. This official corresponds in a general way to the French Prefect. In the Communes of both countries, there is a Burgomaster who, though appointed by the Crown, bears a general resemblance to the Maire in France. One principal consideration affecting the position of these Crown officials represents no small contrast with the situation in France. This is the existence of the small local bodies chosen by the assemblies. The Belgian Provincial Deputation is a good example in point. As has been seen,[1] the French Department Committee was originally intended to reproduce in France the Belgian institution; but, in the course of the passage of the Law on the Departments in 1871, the position of the Department Committee was so weakened as to make the Committee a pale image of the Belgian Provincial Deputation. In turn, the Governor in Belgium is as a result a somewhat pale image of the French Prefect. The

[1] P. 211, *supra*.

same general consideration applies to the relations of the local executive organs to the representatives of the Crown in the Provinces of the Netherlands and in the Communes of both countries.

CHAPTER III. POLITICS AND PARTIES

The operation of government in Belgium and the Netherlands is, as in all democratic countries, conditioned in many important respects by the existence of political parties. Hence, the study of government in the Low Countries must assume at all points that behind the law-book account of institutions stand political organizations, largely extra-legal in character, that give life and vigor to the institutions. More particularly, the operation of the parliamentary system, which is, as has been stressed, identified with political democracy, depends in practice on the existence of political parties.

Belgium and the Netherlands are not two-party but multi-party countries. Hence, in the matter of political parties, they would appear to be closer to France than to England. This is in some respects true in fact, but the observation should not be pushed too far. As has been seen, parliamentary government in the Low Countries operates in a manner that resembles the English model more closely than it does the French. The conclusion must be that the number of parties is not a determining consideration. Somewhat the same causes that give rise to numerous parties in France are operative in Belgium and the Netherlands. Almost all the explanations that can be advanced concerning the situation in France could be shown to have some application in the Low Countries as well. On the other hand, the connection between parties and parliamentary government displays, as might be expected, certain fairly definite differences in the two cases. In general, the political groups in the French chambers are somewhat more numerous than the corresponding organs in the legislative bodies of the Low Countries. Moreover, the difference is almost wholly to be explained in terms of the well-known fact that several groups in the French chambers do not directly correspond to any party in the country at large.[1] In other words, the

[1] Cf. p. 228, *supra.*

number of political parties in France on the one hand and in Belgium and the Netherlands on the other is approximately the same; but, whereas the existence of numerous small groups in the French chambers causes the number of groups to exceed the number of parties, the political groupings in the Low Countries are the same outside and inside the legislatures. This last consideration is connected both as cause and effect with the more "authentic" operation of parliamentary government in Belgium and the Netherlands. The greater cohesion of the parties in the legislative assemblies, as shown by their comparative failure to break up into smaller groups, renders majorities, although formed by coalition, less precarious; and, in turn, greater governmental strength, with which, as has been seen, power of dissolution is in an important way connected, makes for greater political stability.

Right versus Left

Though a two-party system has not developed in Belgium and the Netherlands, there is a tendency, analogous to that to be observed in France,[1] for political opinions and political organizations to fall into two general divisions, the Right and the Left. Fundamentally, as might be expected, the issues between Right and Left are the same in the Low Countries as in France. Differences of degree and of detail are to be explained in terms of history and of related particular conditions. Thus, as is natural, the influence of the French Revolution and its tradition, though of no little importance, is less immediate, less direct, and less strong in the Low Countries than in France. For example, the question of regime has not been in the same degree as in France a subject of partisan controversy in Belgium and the Netherlands. Monarchy is accepted through a general consensus, republican sentiment being of negligible importance. Hence, political democracy, in the development of which the Left has everywhere taken the lead, is, in the Low Countries, not identified both with republicanism and parliamentary government, as in France, but only with the parliamentary system. Consequently, in Belgium and the Netherlands, the interrelated development of political democracy and ministerial responsibility, through extension of the suffrage and other measures conventionally connected with that development, has represented a primary political issue between Left and Right in these countries. So also, the fact that

[1] Cf. pp. 227-231, *supra*.

revolutionary passions have run somewhat less strongly has caused the issues of Army and Church, though by no means without influence along similar lines and in the same general direction as in France, to be less far reaching in their effects. More particularly, religious questions, though they have been primary considerations in political development, have not given rise to irreconcilable conflict; and, as will be observed presently, Church parties are among the most important that operate in present-day political life. Finally, just as, in France, even the strong influence of the French Revolution has become secondary to that of the Industrial Revolution in determining divergency of attitude between Left and Right, so in the Low Countries economic and social questions have, in perhaps even greater degree, assumed precedence over strictly political issues.

Parties and Groups

The number of parties large and small in each of the Low Countries is approximately six. Of these, the two parties with the largest parliamentary representation are to be found one on the Left and one on the Right. They are approximately equal in strength; but neither is alone composed of a majority of the members of any of the chambers. This gives the balance of power to one or more parties in the center.

Socialists and Communists. The principal party of the Left is composed of Socialists. It is known as the Socialist Party in Belgium and as the Social Democratic Labor Party in the Netherlands. Elections in the spring of 1939 in Belgium gave this party 64 seats in the Chamber of Representatives and 61 in the Senate. In the Netherlands, as the result of elections in the spring of 1937, the party has 23 seats in the Lower House and 12 in the Upper House. This party is a moderate or evolutionary socialist party, being an adherent of the Second International. In external affairs, it favors international co-operation. Internally, it is traditionally anti-clerical and reformist. It stands for gradual nationalization through democratic procedure in the interest of the masses, particularly the industrial workers. To the left of the Socialists in both countries are the Communists, who are, of course, affiliated with the Third International. The Belgian Communist Party has 9 seats in the Chamber of Representatives and 3 in the Senate. In the Netherlands, the Communists have 3 seats in the Lower House; but the party is unrepresented in the Upper House.

Parties of the Right. Slightly more numerous than the So-

cialists in both Belgium and the Netherlands is the principal party of the Right, the Catholic Party. In Belgium, its representatives number 73 in the Chamber of Representatives and 61 in the Senate. The Catholic Party in the Netherlands has 31 seats in the Lower House and 16 in the Upper House. This party, as its name indicates, is basically a Church party. It is essentially conservative in character; but its members include Roman Catholics from all classes of society, with the result that the party has a Right and Left wing, as indeed have all parties in greater or less degree. In the Netherlands, as distinguished from Belgium, two other Church parties should be noted in connection with the Catholic Party. These are the two Protestant parties, the Anti-Revolutionary Party and the Christian Historical Party. In practice, these three parties of the Right have on several occasions formed a coalition to serve as the parliamentary basis for a Cabinet. The Anti-Revolutionary Party was in its origin formed by orthodox Calvinists. In opposition to the principles of the French Revolution, it has been strongly antagonistic to liberalism and socialism. At the same time, it displayed, towards the end of the nineteenth century, certain democratic tendencies. This caused some of its leaders to withdraw and to form the Christian Historical Party, today the party of conservative Protestants. The Anti-Revolutionary Party has 17 seats in the Lower House and 7 in the Upper House, the Christian Historical Party 8 seats in the Lower House and 6 in the Upper House. Finally, in connection with the Right, note should be made of the existence of a National Socialist Party in the Netherlands, the Nazis of that country, and of a corresponding Rexist Party in Belgium, which, under the leadership of Léon Degrelle, has had a certain amount of world attention. The National Socialists secured seats in the States-General for the first time after the elections of 1937, their present representation numbering 4 in each House. The Rexist Party was formed in 1935, and at the elections of 1936 it secured 20 seats in the Chamber of Representatives and 12 in the Senate. However, Rexist representation fell in the 1939 elections to 4 in the Chamber and 5 in the Senate. A Flemish Nationalist Party in Belgium favors formation of an independent Flemish State. It has slightly increased its strength in successive elections since the World War. The elections of 1939 gave the party 17 seats in the Chamber of Representatives and 12 in the Senate.

The Center. The junction between Right and Left in the Low Countries is formed by the Liberals. Members of this group-

ing correspond in a general way to the Radicals and Socialist Radicals in France.[1] They fall into Right and Left wings, the former stressing political liberalism, the latter social and economic liberalism. In fact, in the Netherlands, two parties have been formed; so that, whereas in Belgium there is a single Liberal Party, there exists in the Netherlands a Liberal Party and a Liberal Democratic Party. In Belgium, the strength of the party gives it 33 seats in the Chamber of Representatives and 25 in the Senate. The Liberal Democrats have in the Netherlands 6 seats in the Lower House, the Liberals 4. In each case, the representation in the Upper House is just half as large.

[1] Cf. pp. 264-266, *supra*.

BIBLIOGRAPHICAL NOTE ON THE LOW COUNTRIES

There is apparently no recent book treating specifically the government and politics of the Low Countries. The student must consult works on comparative government and on various aspects of the separate countries, to which may be added yearbooks, articles, and the like. In the case of the large body of material written in Dutch or Flemish, presumably the average student and teacher are, like the writer of the foregoing outline sketch, unacquainted with those languages. So far as works in French are concerned, the Grandin bibliography (see p. 277, *supra*), which is mentioned in the Bibliographical Note for France, will furnish the student with all the titles he could desire. Much similarity to French classification—Public Law, Constitutional Law, Administrative Law, Public Finance, etc. (see *ibid.*)—will be noted.

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